# INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 4 AND ISSUE 2 OF 2024

INSTITUTE OF LEGAL EDUCATION

# INDIAN JOURNAL OF LEGAL REVIEW

**APIS – 3920 – 0001 | ISSN - 2583-2344**

**(Free and Open Access Journal)**

**Journal's Home Page – https://ijlr.iledu.in/**

**Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/**

**Volume 4 and Issue 2 of 2024 (Access Full Issue on - https://ijlr.iledu.in/volume-4-and-issue-2-of-2024/)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in


INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

# AN ANALYTICAL STUDY OF CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022 WITH SPECIAL REFERENCE TO HUMAN RIGHTS PERSPECTIVE

**AUTHOR -** ANKIT YADAV, LLM GRADUATE FROM AMITY UNIVERSITY LUCKNOW

**BEST CITATION -** ANKIT YADAV, AN ANALYTICAL STUDY OF CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022 WITH SPECIAL REFERENCE TO HUMAN RIGHTS PERSPECTIVE, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 1559-1593, APIS – 3920 – 0001 & ISSN - 2583-2344.

**List of Abbreviations**

AHTU : Anti Human Trafficking Unit

BLA : Bonded Labour Act

CARA : Central Adoption Resource Agency

CLA : Child Labour Act

CBI : Central Bureau of Investigation, Govt. of India

CID : Criminal Investigation Department (of the State Government)

CRC : Child Rights Convention (of the UN)

CrPC : Criminal Procedure Code

CWC : Child Welfare Committee

CSE : Commercial Sexual Exploitation

CSW : Commercial Sex Worker

CSWB : Central Social Welfare Board, Govt. of India

DD : Daily Diary

FIR : First Information Report

GD : General Diary

ICPS : Integrated Child Protection Scheme

ILO : International Labour Organization

IPC : Indian Penal Code

ITPA : Immoral Trafficking Prevention Act

JJ Act : Juvenile Justice Act

MHA : Ministry of Home Affairs

MPB : Missing Person Bureau

MWCD : Ministry of Women and Child Development, Govt. of India

NCLP : National Child Labour Project

NCRB : National Crime Records Bureau

NIPCCD : National Institute of Public Cooperation and Child Development

NPA : National Plan of Action (of the Government India to Fight Trafficking for Commercial Sexual Exploitation)

NSSO : National Sample Survey Organization

PIL : Public Interest Litigation

SC : Supreme Court of India

SCC : Supreme Court Cases (a case decided by the Apex Court)

TIP : Trafficking in Person

TIT : Trial Initiative against Trafficking

UN : United Nations

UNCRC : United Nations Convention of Rights of the Child

UNICEF : United Nations International Children's Emergency Fund

UNODC : United Nations Office on Drugs and Crime

UT : Union Territories

WCD : Women and Child Development (of the State Government)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

# CHAPTER-1

# INTRODUCTION

The Identification of Prisoner's Act, 1920, which permitted police officials to take measures of those who were convicted, detained, or were awaiting trial within criminal cases, was replaced by Criminal Procedure (Identification) Act, 2022, which was approved by Parliament within April 2022.

The Criminal Procedure (Identification) Act of 2022 allows police personnel legal authority to collect biological plus bodily samples from both suspects plus convicted criminals. police may gather information under Sections 53 plus 53A of CrPc (Code of Criminal Procedure) 1973.

The Data which can be collected includes:

- Finger, Palm-Print & Footprint Impressions
- Photographs
- Iris plus Retina scans
- Physical plus Biological Samples
- Behavioural Attributes

The measurements are to be recorded by a police officer or a prison officer. A police officer is officer-in-charge of police station or an officer whose rank is not below rank of Head Constable. Prison officer is officer whose rank is not below that of Head Warder.

In addition, there must be a record of measurements, which must be kept digitally for 75 years after measurements were taken. For instance, if criminal 'X"s measurements were taken on January 1st, 2030, those measures must be kept digitally until January 1st, 3005.

It should be emphasised that if someone is subjected to measurement collection under this Act plus later: released without a trial; discharged; or found not guilty of an offence under any legislation carrying a term of imprisonment

acquitted by court after exhausting all available legal remedies, relevant person's measurements records will be destroyed unless plus until court or a Magistrate provides written justifications not to do so.

The National Crime Records Bureau must be within charge of gathering measurements records from state governments, union territory administration, plus other law enforcement agencies for time being within interest of detention, investigation, detection, plus prosecution of an offence under any law. Additionally, national level measurement records must be stored, preserved, plus destroyed by NCRB. Additionally, it must process criminal plus crime-related records plus exchange plus distribute those records with any of aforementioned law enforcement agencies.

"The State Government plus Union Territory Administration may notify an appropriate agency to collect, preserve, plus share measurements within their respective jurisdictions."

The Criminal Procedure (Identification) Act of 2022 states that a person is detained under any of country's preventive detention laws if they are arrested within connection with an offence that is punishable under any law that was within effect at time of arrest or if they are convicted of an offence that is punishable under any law that was within effect at time of offence.

For any proceeding under Sections 107, 108, or 109 of Code of Criminal Procedure, 1973, a person who is required to provide security under Section 117 must consent to having his measurements taken by a police officer or a prison officer within accordance with rules established by federal or state governments.

The person within question may not be required to consent to collection of his biological samples under terms of this Act if offence was not committed within violation of a law that was within effect at time it was committed, or if sentence for offence was less than seven years within prison.

Therefore, biological samples must be obtained for crimes against women, children, or crimes with sentences of 7 years or longer within jail.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 4 AND ISSUE 2 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Police officers (officers whose rank is equal to or above that of a Head Constable or officer-in-charge of police station) are permitted by Act under Section 6 sub-clause 1 to take measurements of people who resist or refuse to allow collection of their measurements within a manner that may be prescribed. It should be noted that Section 186 of Indian Penal Code considers any act of defiance or opposition to taking of measurements to be unlawful. There shall be no suit or other process against any person who within good faith does or intends to do anything under this Act or any other rule, according to Section 7 of Criminal Procedure (Identification) Act, 2022.

The manner of taking measurements is covered within Section 3 of Act. collecting, preservation, plus storage of measures as well as their sharing, disseminating, disposal, plus destruction of measurement data are all covered within sub-section (1) of section 4.

In contrast to Identification of Prisoner's Act of 1920

The Criminal Procedure (Identification) Act, 2022, a new Act, expands range of actions taken to identify a criminal. only measures permitted by colonial statute, Identification of Prisoners Act, were pictures plus impressions of finger plus foot. But as we just mentioned, there are now a variety of ways to assess an individual, such as through iris plus retina scans, handwriting analysis, signature analysis, plus even physical plus biological samples like blood, semen, plus hair.

The Identification of Prisoner's Act of 1920 mandated that only those arrested or convicted of crimes that carried a sentence of rigorous imprisonment of one year or more had their measurements taken. new act modifies this requirement plus now states that anyone arrested or convicted of an offence must provide their measurements.

There is one exception to this rule: biological samples may only be taken within cases of crimes against women or children or infractions that carry a minimum sentence of seven years within jail. new Act also permits data collection from anyone held within accordance with any law governing preventative detention.

The Head Warder of a prison is now authorised to collect measurements plus data on prisoners within addition to previously mentioned authorities. Previously, only investigating officers, officers within charge of a police station, or officers with rank of sub-inspector or higher were permitted to do so. However, a Magistrate was also given permission for direct data gathering within accordance with "The Identification of Prisoner's Act".

According to Criminal Procedure (Identification) Act of 2022, same can be handled by a metropolitan or judicial magistrate of first class. An Executive Magistrate may also take measures if individual who was sentenced, arrested, or detained is compelled to maintain good behaviour or peace.

The Head Warder of a prison is now authorised to collect measurements plus data on prisoners within addition to previously mentioned authorities. Previously, only investigating officers, officers within charge of a police station, or officers with rank of sub-inspector or higher were permitted to do so. However, a Magistrate was also given permission for direct data gathering within accordance with "The Identification of Prisoner's Act".

According to Criminal Procedure (Identification) Act of 2022, same can be handled by a metropolitan or judicial magistrate of first class. An Executive Magistrate may also take measures if individual who was sentenced, arrested, or detained is compelled to maintain good behaviour or peace.

The act also makes it possible to measure plus record convicted criminals plus those who have been arrested using current technologies. This is significant because, within order for India to advance to international stage within identification of offenders, a statute from colonial era had to be updated.

The employment of current technology within developed nations produces reliable plus accurate findings, making creation of such measures all more necessary. With use of current technology, measurements may be gathered more quickly while also being more conveniently stored, preserved, plus accessed.

It was thought necessary to broaden "ambit of persons" because "Identification of Prisoner's Act, 1920" only permits a small number of people whose measurements can be taken. new law excels at doing this. Previously, only those who were convicted or detained for crimes carrying a mandatory minimum sentence of one year within jail or more were had to have their measurements taken. With already mentioned exception regarding biological materials, new rule expands this to any infraction. "ambit of persons" was successfully increased by new act.

Regarding Act's problems, first one is that it can transgress both equality plus right to privacy protected by Article 21 of Indian Constitution. There are certain questions regarding data protection of measurement records because data might be maintained for up to 75 years after date of collection.

There is no mention of appropriate safeguards for protection of measurement records, which are a requirement whenever dealing with sensitive information. within absence of a Data Protection Act, this concern is made all more valid because law enforcement authorities are prone to misusing private information of people who have been convicted of a crime, arrested, or detained. Puttaswamy ruling's proportionality doctrine is likewise not upheld by Act.

Although law has a good intention, it falls short within other three aspects of proportionality. Additionally, Act offers no protections against disclosing sensitive information to third parties like Aadhar, CCTNS, etc. As a result, there is a chance that several databases will be linked, violating individual's right to privacy.

The Identification of Prisoner's Act of 1920 required measurements to be obtained of those who were convicted or arrested for crimes carrying a sentence of one year or more within prison; new law now permits collecting measurements of anyone for any offence, including minor offences.

This raises danger of overloading databases plus systems used for collecting, storage, plus preservation of measurement records. within addition, such a provision is likely to encourage abuse of law at lower levels plus may result within widespread surveillance. Why such extreme steps were taken to "identify" each plus every person who has been found guilty or detained is unclear. Additionally, legislation considers it disproportionate that these records must be kept for 75 years.

Another problem is Act's lack of definitions for several terms, which creates uncertainty. Act leaves government with a plethora of options for what to do with measures' records by failing to specify phrases like "analysis" of biological materials. There is a chance of collecting samples plus storing them for 75 years if biological samples that are to be collected have not been specified clearly. This would be a waste of time plus resources for government plus may not even help investigating officers identify accused.

For instance, if officers within charge of collecting measurements for biological samples that include DNA profiling also collect DNA codes that do not or cannot help said officers with their investigation, this could very well result within resource waste because those records must be kept for 75 years from date of collection.

Another problem is that no management guidelines for metrics that must be collected are mentioned. Given quality plus quantity of resources within rural areas, it would be challenging to enact legislation plus set up modern technological management systems within villages plus rural areas, which comes with enormous task of educating police officers

plus officers within charge regarding measurement collection.

The fact that NCRB only manages management plus maintenance of database plus that standard of measurement collection is left to states' discretion is another problem with this Act. measurements that are to be collected should conform to standard of quality that has been established by a group of forensic experts.

To maintain a unified database for entire country, standardised practises plus regulations guaranteeing integrity of measurements are required. To guarantee that consistency is maintained within database plus that it doesn't simply turn into a random collection of measurements from people across India, NCRB must publish a set of guidelines plus procedures. All of this appears simple on paper, but it is actually a challenging effort since we are talking about creating measurement standards that should be universally approved by all of states, which is a huge undertaking within plus of itself.

The Act's provision allowing state governments plus union territories to inform law enforcement agencies to gather, store, plus share measurement records is another problem. Due to lack of constraints within act, it is possible for such sensitive information to be disclosed to a private company, which could result within a private agency carrying out a sovereign role on behalf of state. This could result within transfer of government authority to a for-profit organisation, which could have negative repercussions for state's ability to carry out its duty to uphold law.

Therein lies yet another problem with overaccumulation plus storage. Act makes assumption that prior evidence will be helpful within evaluating a person's guilt for a subsequent offence. This logic is incorrect because it is impossible to distinguish between a piece of evidence that can be used to identify accused plus one that cannot.

The Act based taking of measures on anticipation of evidence that will aid within identification of accused. As a result, there is no need to construct a database because information gathered might not even be used to identify accused. A huge plus comprehensive database that promises to ensure better criminal investigations cannot eradicate current lack of resources plus standards that now apply to forensic exams.

In fact, database might be used as an unreliable source of information within criminal trials plus identification proceedings, slowing down an already drawn-out procedure.

**HUMAN RIGHTS**

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death.

They apply regardless of where you are from, what you believe or how you choose to live life.

They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security.

These basic rights are based on shared values like dignity, fairness, equality, respect and independence.

human rights help you?

Human rights are relevant to all of us, not just those who face repression or mistreatment.

They protect you in many areas of day-to-day life, including:

Right to have and express own opinions

Right to an education

Right to a private and family life

right not to be mistreated or wrongly punished by the state

Where do human rights come from?

The idea that human beings should have a set of basic rights and freedoms has deep roots in Britain.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Landmark developments in Britain include:

The Magna Carta of 1215

The Habeas Corpus Act of 1679

The Bill of Rights of 1689

**The Universal Declaration of Human Rights**

The atrocities of the Second World War made the protection of human rights an international priority.

**The United Nations was founded in 1945.**

The United Nations allowed more than 50 Member States to contribute to the Universal Declaration of Human Rights, adopted in 1948.

This was the first attempt to set out at a global level the fundamental rights and freedoms shared by all human beings.

Universal Declaration of Human Rights.

The European Convention on Human Rights

The Universal Declaration of Human Rights formed the basis for the European Convention on Human Rights, adopted in 1950.

British lawyers played a key role in drafting the European Convention on Human Rights, with Winston Churchill heavily involved.

It protects the human rights of people in countries that belong to the Council of Europe, including the UK.

The Human Rights Act 1998

The Human Rights Act 1998 made the rights set out by the European Convention on Human Rights part of our domestic law.

The Human Rights Act means that courts in the United Kingdom can hear human rights cases.

Before it was passed, people had to take their complaints to the European Court of Human Rights in Strasbourg, France.

These values are defined and protected by law.

All human beings are born with the Right to Life, Right to Personal Liberty, etc. Human rights are enshrined under the Constitution of India and the Universal Declaration of Human Rights. A person cannot be denied of his rights on the grounds that he/she has been detained. The various rights of an arrested person can be inferred from the Code of Criminal Procedure, the Constitution of India and various landmark judgements.

Needs

The Indian legal system is based on the concept of, "innocent till proven guilty". The arrest of a person can be a violation of Article 21 of the Constitution that states, "no person shall be deprived of his right to life and personal liberty except a procedure established by law". It means that the procedure must be fair, clear and not arbitrarily or oppressive.

**Rights of an Arrested Person**

1)Right to know the grounds of Arrest

Section 50 of CrPC says that every police officer or any other person who is authorised to arrest a person without a warrant should inform the arrested person about the offence for which he is arrested and other grounds for such an arrest. It is the duty of the police officer and he cannot refuse it.

Section 50A of CrPC obligates a person making an arrest to inform of the arrest to any of his friends or relative or any other person in his interest. The police officer should inform the arrested person that he has a right to information about his arrest to the nominated person as soon as he is put under custody.

Section 55 of CrPC states that whenever a police officer has authorised his subordinate to arrest any person without a warrant, the subordinate officer needs to notify the person arrested of the substance of written order that is given, specifying the offence and other grounds of arrest.

Section 75 of CrPC says that the police officer(or any other officer) executing the warrant should notify the substance to the person arrested and show him a warrant if it required.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Article 22(1)of the Constitution of India also states that no police officer should arrest any person without informing the ground of arrest.

https://lawsikho.com/course/certificate-criminal-litigation-trial-advocacy

click above

2) Right to be produced before the Magistrate without unnecessary delay

Section 55 of CrPC states that a police officer making an arrest without a warrant should produce the arrested person without unnecessary delay before the Magistrate having jurisdiction or a police officer in charge of the police station, subject to the conditions of the arrest.

Section 76 of CrPC states that the police officer executing a warrant of arrest should produce the arrested person before the court before which he is required by law to produce the person. It states that the person should be produced within 24 hours of arrest. While calculating the time period of 24 hours, it must exclude the time which is required for the journey from the place of detaining to the Magistrate Court.

Article 22(2) of the Constitution states that the police officer making an arrest should be produced before the Magistrate within 24 hours of arrest. If the police officer fails to produce before Magistrate within 24 hours, he will be liable for wrongful detention.

3) Rights to be released on Bail

Subsection(2) of Section 50 of CrPC states that when a police officer arrests any person without a warrant for an offence other than non-cognizable offence; he shall inform him that he has a right to release on bail and to make an arrangement for the sureties on his behalf.

4) Rights to a fair trial

Any provision related to the right to a fair trial is not given in CrPC, but such rights can be derived from the Constitution and the various judgements.

Article 14 of the Constitution of states that "all persons are equal before the law". It means that all the parties to the dispute should be given equal treatment. The principle of natural justice should be considered in respect of both the parties. Right to a speedy trial is recognized in the case Huissainara khatoon vs Home Secretary, State of Bihar [4], the court held- "the trial is to be disposed of as expeditiously as possible".

5) Right to consult a lawyer

Section 41D of CrPC states the right of the prisoners to consult his lawyer during interrogation.

Article 22(1) of the constitution states that the arrested person has a right to appoint a lawyer and be defended by the pleader of his choice.

Section 303 of CrPC states that when a person is alleged to have committed an offence before the criminal court or against whom proceedings have been initiated, has a right to be defended by a legal practitioner of his choice.

6) Right to free Legal Aid

Section 304 of CrPC states that when a trial is conducted before the Court of Session, and the accused is not represented by the legal practitioner, or when it appears that the accused has no sufficient means to appoint a pleader then, the court may appoint a pleader for his defence at the expense of the State.

Article 39A obligates a state to provide free legal aid for the purpose of securing justice. This right has also been explicitly given in the case of Khatri (II) VS State of Bihar [5]. The court held that "to provide free legal aid to the indigent accused person". It is also given at the time when the accused is produced before the Magistrate for the first time along with time commences. The right of the accused person cannot be denied even when the accused fails to apply for it. If the state fails to provide legal aid to the indigent accused person, then it will vitiate the whole trial as void. In the case of Sukh Das vs Union Territory of Arunachal Pradesh [6],

the court held:- "The right of indigent accused cannot be denied even when the accused fails to apply for it". If the state fails to provide legal aid to the indigent accused person it will vitiate the whole trial as void.

7) Right to keep silence

Right to keep silence is not recognized in any law but it can derive its authority from CrPC and the Indian Evidence Act. This right is mainly related to the statement and confession made in the court. Whenever a confession or a statement is made in the court, it is the duty of the Magistrate to find, that such a statement or the confession was made voluntarily or not. No arrested person can be compelled to speak anything in the court.

Article 20 (2) states that no person can be compelled to be a witness against himself. This is the principle of self- incrimination. This principle was reiterated by the case of Nandini Satpathy vs P.L Dani [7]. It stated, "No one can force any person to give any statement or to answer questions and the accused person has a right to keep silence during the process of interrogation".

8) Right to be Examined by the medical practitioner

Section 54 of CrPC states that when the arrested person alleges that examination of his body will lead to a fact which will disapprove the fact of commission of an offence by him, or which will lead to commission of an offence by any other person against his body, the court may order for medical examination of such accused person at the request of him (accused) unless the court is satisfied that such a request is made for the purpose of defeating the justice.

Other Rights

Section 55A of CrPC states that it shall be the duty of the person, under whose custody the arrested person is to take reasonable care of the health and safety of the accused.

The arrested person is to be protected from cruel and inhuman treatment.

Section 358 of CrPC gives rights to the compensation to the arrested person who was groundlessly arrested.

Section 41A of CrPC states that the police officer may give the notice to a person suspected of committing a cognizable offence to appear before him at such date and place.

Section 46 of CrPC prescribes the mode of the arrest. i.e submission to custody, touching the body physically, or to a body. The police officer should not cause death to the person while making an arrest unless the arrestee is charged with an offence punishable with death or life imprisonment.

Section 49 of CrPC states that the police officer should not make more restrained than in necessary for the escape. Restrain or detention without an arrest is illegal.

In D.K Basu vs State of West Bengal and others [8], this case is a landmark judgement because it focuses "on the rights of the arrested person and it also obligates the police officer to do certain activities". The court also states that if the police officer fails to perform his duty then he will be liable for contempt of court as well as for the departmental actions. Such matter can be instituted in any High Court having the jurisdiction over the matter.

In spite of various efforts in protecting the accused from the torture and inhuman treatment, there are still instances of custodial deaths and the police atrocities. So, the Supreme court issued 9 guidelines for the protection of accused person and the amendment of various sections of CrPC:-

Section 41B– The police officer who is making an investigation must bear visible, clear and accurate badge in which the name of the police officer along with his designation is clearly mentioned.

The police officer making an arrest must prepare a cash memo containing a date and

time of arrest which should be attested by at least one members who can be his family member or any respectable person of a locality. The cash memo should be countersigned by the arrested person.

Section 41D:- The arrested person is entitled to have a right to have one friend, or relative or any other person who is having interest in him informed about his arrest.

The arrestee must be informed about his right to have someone informed about his right immediately when he is put under the custody or is being detained.

Entry is to be made in the diary which shall disclose the information relating to the arrested person and it shall also include the name of the next friend to whom information regarding the arrest is made. It also includes the name and the particulars of the police officers under whose custody the arrestee is. An examination is to be conducted at the request of the arrestee and the major and minor injuries if any found on the body must be recorded. The inspection memo must be signed by the police officials and the arrested person.

The arrestee has the right to meet his lawyer during and throughout the interrogation.

Copies of all documentation are to be sent to Magistrate for his record. It also includes a memo of the arrest

Section 41C:- The court ordered for the establishment of state and district headquarters, the police control room where the police officer making an arrest shall inform within 12 hours of arrest and it needs to be displayed on the conspicuous board.

Yoginder Singh vs State of Punjab[1]. The Court held that for the enforcement of Article 21 and 22(1) it is necessary that:-

The arrestee has the right to have informed about his arrest to any of its friends, relative or any other person in his interest.

The police officer should aware of the arrestee about his right immediately when he is brought under the custody.

The entry must be made in a diary regarding the name of the person who has been informed about the arrest.

Prem Shukla vs Delhi Administration[2], the court held that "the prisoners have a right not be handcuffed Fetterly or routinely unless the exceptional circumstances arise".

**Conclusion**

Custodial death and illegal arrest is a major problem in India. It infringes Article 21 of the Constitution and also the basic human rights which is available under Universal Declaration Of Human Rights. The guidelines issued by the Supreme Court in D.K Basu vs State of West Bengal[3] is not properly being implemented. Proper implementation of the provision and guidelines can result in the decreasing number of an illegal arrest.

[1] AIR 1997 (1) SCC 416

[2] 1980 SCR (3)855

[3] AIR 1997 1 SCC 416

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

# CHAPTER-II

# KEY FEATURES OF CRIMINAL PROCEDURE (IDENTIFICATION) RULES, 2022

The Identification of Prisoners Act, 1920 allows police officers to collect certain identifiable information (fingerprints and footprints) of persons including convicts and arrested persons.[4] Also, a Magistrate may order measurements or photographs of a person to be taken to aid the investigation of an offence. In case of acquittal or discharge of the person, all material must be destroyed.

There have been advances in technology that allow other measurements to be used for criminal investigations. The DNA Technology (Use and Application) Regulation Bill, 2019 (pending in Lok Sabha) provides a framework for using DNA technology for this purpose.[5] In 1980, the Law Commission of India, while examining the 1920 Act, had noted the need to revise it to bring it in line with modern trends in criminal investigation.[6] In March 2003, the Expert Committee on Reforms of the Criminal Justice System (Chair: Dr. Justice V. S. Malimath) recommended amending the 1920 Act to empower the Magistrate to authorise the collection of data such as blood samples for DNA, hair, saliva, and semen.[7]

The Criminal Procedure (Identification) Bill, 2022 was introduced in Lok Sabha on March 28, 2022. The Bill seeks to replace the Identification of Prisoners Act, 1920.[8]

**Key Features of the Bill**

The Bill expands: (i) the type of data that may be collected, (ii) persons from whom such data may be collected, and (iii) the authority that may authorise such collection. It also provides for the data to be stored in a central database. Under both the 1920 Act and the 2022 Bill, resistance or refusal to give data will be considered an offence of obstructing a public servant from doing his duty. Table 1 compares provisions of the 2022 Bill with the 1920 Act.

Table 1: Comparison of key provisions of the 1920 Act and the 2022 Bill

| 1920 Act | Changes in the 2022 Bill |
|---|---|
| **Data permitted to be collected** | |
| Fingerprints, foot-print impressions, photographs | Adds: (i) biological samples, and their analysis, (ii) behavioural attributes including signatures, handwriting, and (iii) examinations under sections 53 and 53A of CrPC (includes blood, semen, hair samples, and swabs, and analyses such as DNA profiling) |
| **Persons whose data may be collected** | |
| Convicted or arrested for offences punishable with rigorous imprisonment of one year or more<br>Persons ordered to give security for good behaviour or maintaining peace<br>Magistrate may order in other cases collection from any arrested person to aid criminal investigation | Convicted or arrested for any offence. However, biological samples may be taken forcibly only from persons arrested for offences against a woman or a child, or if the offence carries a minimum of seven years imprisonment<br>Persons detained under any preventive detention law<br>On the order of |

[4] The Identification of Prisoners Act, 1920.
[5] The DNA Technology (Use and Application) Regulation Bill, 2019.
[6] Eighty-Seventh Report on Identification of Prisoners Act, 1920, Law Commission of India, 1980.
[7] Committee on Reforms of Criminal Justice System Report (Volume 1), Ministry of Home Affairs, March 2003.
[8] The Criminal Procedure (Identification) Bill, 2022.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

| | |
|---|---|
| | Magistrate, from any person (not just an arrested person) to aid investigation |
| **Persons who may require/ direct collection of data** | |
| Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above | Officer in charge of a police station, or of rank Head Constable or above. In addition, a Head Warder of a prison |
| Magistrate | Metropolitan Magistrate or Judicial Magistrate of first class. In case of persons required to maintain good behaviour or peace, the Executive Magistrate |

Note: CrPC - The Code of Criminal Procedure, 1973.

Sources: The Identification of Prisoners Act, 1920; The Criminal Procedure (Identification) Bill, 2022; PRS.

The National Crime Records Bureau (NCRB) will be the central agency to maintain the records. It will share the data with law enforcement agencies. Further, states/UTs may notify agencies to collect, preserve, and share data in their respective jurisdictions.

The data collected will be retained in digital or electronic form for 75 years. Records will be destroyed in case of persons who are acquitted after all appeals, or released without trial. However, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.

Issues to consider

**Bill may violate the Right to Privacy as well as Equality**

The Bill permits the collection of certain identifiable information about individuals for the investigation of crime. The information specified under the Bill forms part of the personal data of individuals and is thus protected under the right to privacy of individuals. The right to privacy has been recognised as a fundamental right by the Supreme Court (2017).[6] The Court laid out principles that should govern any law that restricts this right. These include a public purpose, a rational nexus of the law with such purpose, and that this is the least intrusive way to achieve the purpose. That is, the infringement of privacy must be necessary for and proportionate to that purpose. The Bill may fail this test on several parameters. It may also fail Article 14 requirements of a law to be fair and reasonable, and for equality under the law.[9]

The issue arises due to the fact that: (a) data can be collected not just from convicted persons but also from persons arrested for any offence and from any other person to aid an investigation; (b) the data collected does not need to have any relationship with evidence required for the case; (c) the data is stored in a central database which can be accessed widely and not just in the case file; (d) the data is stored for 75 years (effectively, for life); and (e) safeguards have been diluted by lowering the level of the official authorised to collect the data. We discuss these issues below, and explore some of the consequences through a few examples.

**Persons whose data may be collected**

The Bill expands the set of persons whose data may be collected to include persons convicted or arrested for any offence. For example, this would include someone arrested for rash and negligent driving, which carries a penalty of a maximum imprisonment of six months. It also

[9] Article 14, The Constitution of India.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

expands the power of the Magistrate to order collection from any person (earlier only from those arrested) to aid investigation. This differs from the observation of the Law Commission (1980) that the 1920 Act is based on the principle that the less serious the offence, the more restricted should be the power to take coercive measures.3 Note that the DNA Technology (Use and Application) Regulation Bill, 2019 waives the consent requirement for collecting DNA from persons arrested for only those offences which are punishable with death or imprisonment for a term exceeding seven years.[10]

**Persons who may order data to be collected**

Under the 1920 Act, a Magistrate may order data to be collected in order to aid the investigation of an offence.1 The Law Commission (1980) remarked that the 1920 Act did not require the Magistrate to give reasons for his order.3 It observed that the ambit of the law was very wide ("any person" arrested in connection with "any investigation"), and refusal to obey the order could carry criminal penalties. It recommended that the provision be amended to require the Magistrate to record reasons for giving the order. The Bill does not have any such safeguard. Instead, it lowers the level of the police officer who may take the measurement (from sub-inspector to head constable) and also allows the head warder of a prison to take measurements.

**What data may be collected**

The Bill widens the ambit of data to be collected to include biometrics (finger prints, palm prints, foot prints, iris and retina scan), physical and biological samples (not defined but could include blood, semen, saliva, etc.), and behavioural attributes (signature, handwriting, and could include voice samples). It does not limit the measurements to those required for a specific investigation. For example, the Bill permits taking the handwriting specimen of a person arrested for rash and negligent driving. It also does not specifically prohibit taking DNA samples (which may contain information other than just for determining identity). Note that under Section 53 of the Code of Criminal Procedure, 1973, collection of biological samples and their analysis may be done only if "there are reasonable grounds for believing that such examination will afford evidence as to the commission of an offence".

**Biological samples**

The Bill makes an exception in case of biological samples. A person may refuse to give such samples unless he is arrested for an offence: (i) against a woman or a child, or (ii) that carries a minimum punishment of seven years imprisonment. The first exception is broad. For example, it could include the case of theft against a woman. Such a provision would also violate equality of law between persons who stole an item from a man and from a woman.

**Retaining data**

The Bill allows retaining the data for 75 years. The data would be deleted only on the final acquittal or discharge of a person arrested for an offence. The retention of data in a central database and its potential use for the investigation of offences in the future may also not meet the necessity and proportionality standards.

**Examples**

The examples below illustrate some of the consequences of the provisions of this Bill.

Illustration 1. Person W is found guilty of rash and negligent driving (and fined Rs 1,000). He may have his signature collected and stored in a central database for 75 years. The Bill permits this.

Illustration 2. Person X is arrested for an offence. He refuses to give his fingerprints. He is charged with preventing a public servant from performing his duty (Section 186 of the Indian Penal Code, 1860). His fingerprints are forcibly taken under both cases. He is subsequently discharged from the original case. However, as

[10] Section 53, The Code of Criminal Procedure, 1973.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 4 AND ISSUE 2 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

he is guilty under Section 186 of the Indian Penal Code in the second case, his fingerprints can be stored for 75 years.[9] This implies that anyone who is arrested for any offence and refuses to give measurements can have their data stored for 75 years, even if they are acquitted in the main case.

Illustration 3. Person Y is arrested. The case goes on for 20 years through several appellate levels (this is not unusual). His records will remain in the database for this period. He gets acquitted. He is arrested in another case just before the final acquittal in the first case. The records can be kept in the database until the second case is decided. This process can be continued through a third case and so on.

Illustration 4. Person Z defies Section 144 orders under the Code of Criminal Procedure, 1973 (unlawful assembly) and is arrested. His fingerprints are taken (the Bill does not require a connection between the measurement and the evidence needed for investigation).[10] He is found guilty under Section 188 of the Indian Penal Code (disobeying an order of a public servant) and fined Rs 200.[11] His fingerprints will be in the database for 75 years.

The Criminal Procedure (Identification) Act, 2022 allows collection of identifiable information from individuals for investigation of crime. It replaced the Identification of Prisoners Act, 1920, and expanded the ambit of people from whom information can be collected, and the categories of information that will be collected. Petitions challenging the Act are currently pending in the Delhi and Madras High Courts.

In September 2022, the Criminal Procedure (Identification) Rules, 2022 were notified under the Act to specify the manner of taking certain information from individuals, the manner of collecting, storing, sharing such records, and the disposal of such records.[ii]

**KEY FEATURES**

The Criminal Procedure (Identification) Act, 2022, empowers police officers or prison officers to collect certain identifiable information from convicts or those who have been arrested for an offence. This information could include finger-prints, photographs, iris and retina scan, biological samples and their analysis, and behavioural attributes. The Act empowers the National Crime Records Bureau (NCRB) to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate and destroy records of measurements, as may be prescribed by rules. The Criminal Procedure (Identification) Rules, 2022 specify these details. These Rules were notified by the Ministry of Home Affairs on September 19, 2022.

**Key features of the 2022 Rules include:**

Taking measurements: Under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. The Rules specify that for certain persons measurements will not be taken unless they have been charged or arrested in connection with any other offence. These persons include those violating prohibitory orders under Sections 144 or 145 of the Code of Criminal Procedure, 1973 (CrPC), or arrested under preventive detention under Section 151 of CrPC.

Persons authorised to take measurements: The Act provides that measurements will be taken by a police officer or prison officer. The Rules specify that an authorised user, or any person skilled in taking the measurements, or a registered medical practitioner, or any person authorised in this behalf may take such measurements. An authorised user has been defined as a police officer or a prison officer, who has been authorised by the NCRB to access the database.

Storage of measurement records: The Rules specify that the NCRB will issue the Standard Operating Procedures (SOPs) for taking measurements including: (i) specifications and the format of the measurements to be taken, (ii) specifications of the devices to be used for taking these measurements, and (iii) the method of handling and storing these

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

measurements. The SOPs may also provide for: (i) the digital format to which each measurement should be converted before uploading on to the database, and (ii) the encryption method.

Sharing of records: To match the record of measurements of a person, an authorised user will forward the request to NCRB. NCRB will match the record and provide a report to the authorised user through a secure network. The SOPs will provide the guidelines for processing and matching of the records.

Destruction of records: The Act provides that the records will be destroyed in case of persons who: (i) have not been previously convicted (of an offence with imprisonment), and (ii) are released without trial, discharged, or acquitted by the court, unless directed otherwise by the Magistrate or court. The NCRB will destroy the records as prescribed. As per the Rules, the SOPs will provide the procedure for destruction and disposal of records. The state or central government or UT administration will nominate a nodal officer to whom requests for destruction of record of measurements will be made. The nodal officer will recommend the destruction of records to NCRB after verifying that such records are not linked with any other criminal cases.

## KEY ISSUES AND ANALYSIS

The Act has several provisions that may violate a person's right to privacy under Article 21 of the Constitution as laid down by the Supreme Court. It may also fail the Article 14 requirement of a law to be fair and reasonable, and for equal treatment. We have discussed these issues in our note on the Criminal Procedure (Identification) Bill, 2022.[11] In this note, we examine the various issues that arise from the Rules notified on September 19, 2022.

### Rules going beyond the scope of the Act

The Supreme Court has held that Rules cannot alter the scope, provisions, or principles of the parent Act.[12] There are several instances where these Rules may be altering the scope of the Act. We discuss these below.

### Restricting instances where measurements may be taken

Under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. Further, the Magistrate may order collection of measurements from any person to aid investigation. The Rules specify that for certain persons measurements will not be taken unless they have been charged or arrested in connection with any other offence. These persons include those violating prohibitory orders under Sections 144 or 145 of CrPC, or arrested under preventive detention under Section 151 of CrPC. Thus, the Rules are restricting the grounds under which a person's data may be collected. In doing so, they may be altering the grounds specified in the Act, and thus going beyond the scope of the Act.[13]

### Expanding the list of persons who may take measurements

The Act provides that the measurements will be taken by a police officer or prison officer. The Rules expand this to also allow any person skilled in taking the measurements or a registered medical practitioner or any person authorised in this behalf to take such measurements. In adding these new categories of persons not specified in the Act, the Rules may be going beyond the scope of the Act. The Act or the Rules also do not define who is a person skilled in taking measurements.

[11] Issues for Consideration: Criminal Procedure (Identification) Bill, 2022, PRS Legislative Research, April 4, 2022.

[12] Agricultural Market Committee vs Shalimar Chemical Works Ltd, 1997 Supp (1) SCR 164, May 7, 1997.

[13] Section 2(1)(b) of the Act, defines 'measurements' as including finger-impressions, palm-print impressions, footprint impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Cr.P.C . As per various privacy guidelines, such measurements constitute personal data. See General Data Protection Regulation, Article 4 (1) (13) (14).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

**Restricting the list of persons who can take measurements**

The Act permits the collection of measurements by either a prison officer (not below the rank of Head Warder), or a police officer (in charge of a police station, or at least at the rank of a Head Constable). The Rules specify that an authorised user may take measurements under the Act. As per the Rules, an authorised user has been defined as a police officer or a prison officer, who has been authorised by the NCRB to access the database. Thus, the Rules are restricting the category of officers who may take measurements and access the database. The Act does not allow the NCRB or any other entity to prescribe such restrictions. It also does not delegate the power to prescribe such restrictions to the central or state governments. Therefore, in prescribing such restrictions, the Rules may be going beyond the scope of the Act.

**Excessive delegation**

The Act empowers the NCRB to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate and destroy records of measurements as may be prescribed by rules. It delegates the power to make Rules to the central and state government. The Rules specify that NCRB, through SOPs, will specify the guidelines and procedure for: (i) taking measurements, (ii) handling and storage of these records, (iii) the processing and matching of the records, and (iv) destruction and disposal of records. This raises two questions.[14]

**Further delegation of rule-making power to NCRB**

In allowing the NCRB to specify these guidelines, the Rules may be further delegating rule making powers of the government to the NCRB. The Supreme Court (2014) when examining a case on excessive delegation had noted that "Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate."[15]

This also raises a further question that whether these SOPs would be laid before Parliament or State Legislatures. The Act requires the respective governments to table the Rules in Parliament or State Assemblies. For example, the Rules that we are discussing need to be tabled. However, it is not clear whether the SOPs prescribed by the NCRB will see such scrutiny.

**Conflict in NCRB prescribing own guidelines**

By issuing these SOPs, the NCRB will be issuing guidelines for itself for collecting, storing and processing of measurements. This may violate the principle of separation of roles between the entity that issues guidelines and the entity that has to follow such guidelines.

**Records to be destroyed on request**

Under the Act, NCRB will store, preserve and destroy the records, as prescribed. The records will be destroyed in case of persons who: (i) have not been previously convicted, and (ii) are acquitted after all appeals, or released without trial. As per the Rules, the SOPs will provide the procedure for destruction and disposal of records. To destroy any record, a request has to be made to a nodal officer (appointed by the state or central government or UT administration). The nodal officer will recommend the destruction of records to NCRB after verifying that such records are not linked with any other criminal cases. While the Act requires destruction of records in such cases,

[14] It needs to be remembered that access herein would include not only record-keeping of data but also a liberty to build individual 'profiles' on the basis of such data, since the definition of measurements includes 'analysis' of the samples

[15] Siddharth Sarawagi vs Board of Trustees for the Port of Kolkata and others, SPECIAL LEAVE PETITION (CIVIL) NO.18347/2013, Supreme Court of India, April 16, 2014.

the Rules put the onus on the individual to request for such destruction.

In some other laws, the onus of destroying personal information is on the authority maintaining the information or on the courts to direct the authority to delete such information when it is no longer required. For example, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that records of a child who has been convicted and has been dealt with under the law should be destroyed (except for heinous offences).[16] In such cases, the Juvenile Justice Board directs the police or the court and its own registry to destroy the records. The Rules under the Act also specify that such records be destroyed (after expiry of the appeal period) by the person-in-charge, Board, or the Children's Court.[17] The Identification of Prisoners Act, 1920 (which was repealed by the 2022 Act) provided that records of a person who has been acquitted be destroyed.[18]

The Criminal justice system is witnessing a sea of changes with the introduction of the Criminal Procedure (Identification) Act, of 2022. The Act has steered the debate around criminal identification as a method for investigation in criminal cases in India as it provides a legal sanction to law enforcement agencies for taking biological measurements of convicts and other persons for the purposes of identification and investigation of criminal matters. Interestingly, despite enacting the law in the initial months of the year 2022, the Ministry of Home Affairs notified it to come into effect on August 4, 2022 just one day after the Personal Data Protection Bill was withdrawn. In a plethora of judgments, the Hon'ble Supreme Court of India has reaffirmed the importance of the fundamental right to privacy, integrity, and bodily autonomy. In the landmark judgment of KS Puttaswamy v. Union of India (2017) the Apex Court laid down the test of proportionality that allows the extent of the state's intervention in the private affairs of individuals and upheld the right to privacy as an important facet of Right to life under Article 21 of the Constitution. Another challenge under the Act is that it defines 'measurements' to include fingerprints, handprints, footprints, eye scans, biological samples, and behavioural attributes like signatures, handwriting or any other examination under section 53 or 53A of the Act. It is noteworthy that behavioural attributes are nowhere defined under forensic sciences and thus, the term used in the Act is vague. It is not farfetched to think that behavioural attributes can be interpreted to include narco-analysis, polygraph and brain mapping tests which were expressly prohibited by the Supreme Court in the case of Selvi v. State of Karnataka, (2010) for violating Article 20(3) of the Constitution of India, i.e., the right against self-incrimination. This brings us to the question, how much individual freedom should the citizens be asked to give up in exchange for the protection of the state and maintenance of social order under the social contract theory? In light of these precedents and the much-debated provisions of the Criminal Procedure (Identification) Act, of 2022 Maharashtra National Law Mumbai is conducting a National Symposium on Criminal Procedure (Identification) Act, 2022. Through this symposium, we attempt to deliberate upon the ever-going juxtaposition of individual liberty with social interest. As this area is comparatively niche in criminal jurisprudence, it is important to have quality academic discussions on the same. Understanding the constitutionality of the provisions of the Act and procedural challenges and discussing probable solutions will be of vital importance for investigating agencies, lawyers, forensic experts, judges, academicians, and students and will give a platform to aid in ameliorating the criminal justice system. This Symposium will host a galaxy of renowned experts. Since Criminal Procedure (Identification) Act, 2022 is both a concern of future research and technology, Centre for Advanced Legal Studies,

[16] The Juvenile Justice (Care and Protection of Children) Act, 2015.
[17] The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Ministry of Women and Child Development, September 21, 2016.
[18] The Identification of Prisoners Act, 1920.

Training and Research and Centre for Information Communication Technology and Law at Maharashtra National Law University Mumbai have collaborated to organize the 1st ever National Symposium at the University. About Organizers Maharashtra National Law University Maharashtra National Law University Mumbai is one of the premier National Law Universities in India. The prime goal of the University is to disseminate advance legal knowledge and processes of law amongst the students and impart to them the skills of advocacy, legal services, and law reforms and make them aware and capable to utilize these instruments for social transformation and development. To attain this goal, it started its first academic endeavour on 1st August 2015. Centre for Advanced Legal Studies, Training and Research (CALSTAR) The centre was established with a vision to bring all academic, research and training activities relating to existing, contemporary, and futuristic law under the single, unique and independent umbrella of the department in the Maharashtra National Law University. The main objectives of the centre are to facilitate advanced legal studies, legal training, and legal research. The centre regularly organizes workshops, seminars, and colloquiums to achieve these aims. Centre for Information Communication Technology and Law (CICTL) The Centre aims to be a hub of excellence in generating and disseminating knowledge concerning the interrelationship between technology and law across the globe. The main objectives of the centre are to study the objectives and challenges in the digital society from a legal perspective, facilitate a dialogue between experts, leaders and researchers in law and technology domain, work in collaboration between national and international research centres and provide consultancy to professionals, non-profit organizations, and public agencies in the techno-legal field. About Pro Bono Club – The Pro Bono club was established at Maharashtra National Law University Mumbai to provide equal access to justice for all citizens, a fundamental right of every citizen. The Pro-Bono Club works on the 'Assisted Model' in collaboration with the government and private organizations. The legal community is also well aware that under the current legislative structure, access to legal services is a highly privileged right. As a result, many persons from disadvantaged, underdeveloped, marginalized, and vulnerable areas cannot obtain the necessary legal information and support. This Club will combine university students ' legal and academic skills with ventures and projects to ensure that justice reaches even the most disadvantaged and vulnerable communities and people. The Pro Bono Club' s objectives include: Enrolling University students in the Nyaya Bandhu (Pro-Bono Legal Services Club) Programme; Assisting private and public bodies and individuals, such as Government Departments and lawyers, in carrying out pro-bono work. About the Symposium – Criminal law is going to witness a sea change with the introduction of the Criminal Procedure (Identification) Act, of 2022. The Act has steered the jurisprudence regarding criminal identification and criminal procedure in India. The Hon'ble Supreme Court of India in a plethora of judgments has upheld the fundamental right of privacy, integrity and autonomy. For instance, in the famous judgment of KS Puttaswamy v. Union of India (2017) the Apex Court upheld the right to privacy under Article 21 of the Constitution. Further, the decision of Selvi v. State of Karnataka, (2010) held that the tests such as Brain-mapping and Narco-analysis are unconstitutional in nature as they are against Article 20(3) of the Constitution of India, i.e., the right against self-incrimination. Understanding the viability of scientific tests such as Narco analysis, DNA profiling, taking biological samples, and maintaining criminal databases, among other issues, will be of vital importance for investigating agencies, lawyers, forensic experts, judges, academicians, and students; it will aid in the criminal justice system. In light of these precedents and the much-debated

provisions of the Criminal Procedure (Identification) Act, of 2022 Maharashtra National Law University Mumbai is conducting a National Symposium on Criminal Procedure (Identification) Act, 2022. Through this symposium, we attempt to deliberate upon the ever going juxtaposition of individual liberty with societal interest. As this area is comparatively niche in criminal jurisprudence, it is important to have quality academic discussions on the same. This Symposium will host a galaxy of experts as speakers including Special Public Prosecutor Adv. Ujjwal Nikam, Adv. Bharat Chugh, Mr. Anmol Deshmukh, Forensic Expert Government of Maharashtra amongst others. Since Criminal Procedure (Identification) Act, 2022 is both a concern of future research and abuse of technology, the Centre for Advanced Legal Studies, Training and Research and the Centre for Information Communication Technology and Law at Maharashtra National Law University Mumbai have collaborated to organize the 1st ever National Symposium at the University.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

# CHAPTER-III

# THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022 AND THE RIGHT TO PRIVACY

The Criminal Procedure (Identification) Act, 2022 was enacted to replace the Identification of Prisoners Act, 1920. Effectually, the new enactment has widened, both, the scope and ambit of a colonial era legislation. While the stated purpose is introduction of new technologies, the legislation potentially encroaches upon the right to privacy forming an intrinsic part of Article 21 of the Constitution, as being examined in this article.

On 28 March 2022, the Government of India introduced the Criminal Procedure (Identification) Bill, 2022 which has now been passed and enacted, as the Criminal Procedure (Identification) Act, 2022 (Act).

Trumpeted to be a replacement of the Identification of Prisoners Act, 1920, (1920 Act) and purposed for the introduction of new 'measurement' techniques, the Act, arguably, borders on being arbitrary and violative of fundamental right to privacy. In context, the article examines the concerns of expanded applicability and a random approach to retention of personal data while also undertaking an analysis in reference to the landmark judgement of Justice K.S.Puttaswamy (Retd) and Another versus Union of India and Others (Privacy judgement).

**Concerns Inherent in the Act**

Expanded Applicability

Section 3 of the Act, categorizes the 'persons' covered as those:

Convicted of an offence punishable under any law or

Any person falling under sections 107, 108, 109 or 110 of the Criminal Procedure Code, 1973 (Cr.P.C.) and ordered to give security for keeping peace or maintaining good behavior; or

Arrested in connection with an offence punishable under any law; or

Detained under any preventive detention law.

Section 5 expands the applicability to anyone by empowering the Magistrate to pass an order directing any person to give measurements under this Act, if satisfied that the same is required for the purpose of any investigation or proceeding.

In comparison, the 1920 Act mandates the taking of measurements (only) of persons arrested or convicted for offences punishable with imprisonment of 1 year (or above). Also, the same empowers the Magistrate to pass order against an individual only if the person had been previously arrested in connection with the proceeding. Furthermore, there was no provision for taking of measurements of those held under preventive detention laws.

Necessarily, the Act not only extends the application to persons accused of minor offences but also provides a convenient route for a roving collection of personal data through random arrests under the preventive detention laws and through Magisterial orders under section 5 of the Act (which provision lacks any scaffolding of a speaking order).

Retention of Data

Section 4(2) of the Act provides for retention of 'measurements' recorded, for a period of 75 years (from the date of collection).

Proviso to the section states that where any person who has not been previously convicted of any offence, is released without trial or discharged or acquitted; all measurements recorded under the Act, would be destroyed (unless directed to the contrary, by the Magistrate).

The necessary corollary would then be:

The state has access to 'measurements' (personal data) of an individual for 75 years;

Measurements of an individual who has been previously convicted but has been acquitted for

an offence for which measurements were taken, would not be destroyed;

The Magistrate may order retention of measurements of any individual, even though discharged or pronounced innocent by a Court of law.

A concerning upshot is that the proviso imparts a retrospective effect to the Act, by retaining records of those who had been convicted before the enactment of this Act but acquitted of an offence for which measurements were recorded (under the Act).

Analysis in Reference to the Fundamental Right to Privacy

Potential for violation of Right to Privacy

The Privacy judgement held that:

"…right to privacy is a basic fundamental right forming an intrinsic part of Article 21…".

Dwelling upon various facets of privacy and circumstances permitting restrictions on fundamental rights, the Apex Court stated that in terms of the Article 21 requirement of 'procedure established by law', the expression;

"…does not connote a formalistic requirement of a mere presence of procedure in the enacted law. That expression has been held to signify the content of the procedure and its quality which must be fair, just and reasonable…".[19]

Accordingly, the Court laid down a three-fold requirement test for all restraints sought to be applied:[20]

Legality which postulates the existence of a law;

Need, defined in terms of a legitimate state aim; and

Proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.

An analytical application of this test could be undertaken as:

Legality

The enactment of the Act fulfills the first requirement of existence of an established law.

Legitimate State Aim

The second requirement is existence of a legitimate state aim ensuring that the nature and content of the law falls within the zone of 'reasonableness'. Such legitimacy is a guarantee against any State arbitrariness.

In context, the objects and reasons of the legislation state that the Act has been introduced to make provisions for modern techniques and to expand scope and ambit; as also to authorise taking and recording measurements of convicts and other persons, for identification, investigation and to preserve records.

While introduction of modern techniques for improved investigations into criminal offences, might constitute a legitimate aim; an arbitrary expansion of scope and ambit of the Act and preservation of personal data (as provisioned), cannot be a legitimate state aim.

It has been categorically stated that;

"…The pursuit of a legitimate state aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgement. Judicial review does not reappreciate or second-guess the value judgement of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness…".

Necessarily, the Act which legitimizes a roving exercise to gather and preserve personal data of individuals, at will; does not pass muster, on the principle of 'reasonableness' required to justify abridgement of a fundamental right.

**Proportionality**

Proportionality mandates a rational nexus between the objectives sought to be achieved by the State and means adopted for the same.

[19] (2017) 10 SCC 1, para 291 (pg.495)
[20] (2017) 10 SCC 1, para 310 (pg. 504)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Essentially, this requires a rational nexus between improved investigations through modern techniques and expanded applicability and prolonged retention of personal data.

However, the Act does not display such proportionality as can be examined:

Section 3(c) permits recording of 'measurements' of individuals detained under the preventive detention laws.

Preventive detention laws are brought into operation when there is an apprehension that an individual may commit an act detrimental to public order or security of the state. Such individuals are held pursuant to an order of detention and without registration of a First Information Report (FIR) or commencement of any investigative proceedings or criminal trial.

Recording of 'measurements' of individuals who do not fall into the category of either arrested or convicted (within the criminal justice system), is thus, disproportionate and without any rational nexus.

Vide this Act, the legislature has taken the arbitrariness, inherent in preventive detention laws, a step forward, whence there is a complete absence of state accountability.

Section 5 empowers the Magistrate to direct recording of 'measurements' of any individual, for the purpose of any investigation or proceeding. The Act is unprecedented in extension of applicability to those individuals against whom there is no complaint or FIR. Absence of an obligation of a speaking order, further adds to the arbitrariness and lack of accountability, inherent in the Act.

Hence, the Act (as enacted), fails to satisfy the requirements of 'legitimacy' and 'proportionality', necessary for any abridgement of a fundamental right.

**Potential Consequences of the Act in its Present Form**

The Act in its present form, could potentially lead to:

Collection and retention of personal data of those against whom there is no initiation of criminal proceedings;

**Retention of personal data of those acquitted or discharged;**

Retention of personal data of those required to provide security for good behavior or for maintaining peace and those held under preventive detention laws, since the Act is silent about deletion of data of those who are not formally discharged, released without trial or acquitted;

Creation of inferences or profiles in the garb of 'analysis' of data, unknown to such individuals.

It is hence imperative that the present Act be amended to narrow its applicability as also streamline the retention policy, in harmonization with the salutary principles of data privacy as enumerated within various data privacy laws. The same is also required to ensure an effective application of the Act, for assisting investigations while preserving fundamental rights of the populace.

The Hon'ble Apex Court in the Privacy judgement warned that:

"...Knowledge about a person gives power over that person. The personal data collected is capable of effecting representations, influencing decision-making processes and shaping behavior. It can be used as a tool to exercise control over us like the 'big brother' State exercised. This can have a stultifying effect on the expression of dissent and difference of opinion which no democracy can afford...".[21]

[21] (2017) 10 SCC 1, para 591 (pg. 620)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

**A comparision between the two Identification Acts**

The previous Identification of Prisoners Act, 1920 and the freshly notified Criminal Procedure (Identification) Act, 2022 have similarities as well as major differences. A quick look at how "measurements" of convicts and arrested persons will be collected from now on

| Relevant provisions | Identification of Prisoners Act | Criminal Procedure identification Act |
|---|---|---|
| Persons whose measurements can be taken | should be convicted of an offence punishable with rigorous imprisonment of one year or upwards | if convicted of an offence punishable under any law |
| | should be arrested for an offence punishable with rigorous imprisonment of one year or upwards | if arrested for an offence punishable under any law or if detained under preventive detention laws |
| | if directed by the Magistrate for measurements to be taken for the purposes of investigation of proceedings under the CrPC, provided the person has been arrested in connection with such investigation previously | if directed by the Magistrate for measurements to be taken for the purposes of investigation of proceedings under the CrPC or any other law in force, there is no requirement for the person to have been arrested in connection with such proceedings previously |
| | ordered to give security for his good behaviour under CrPC | ordered to give security for his good behaviour under CrPC |
| Measurements that can be taken | finger impressions, foot impressions, measurements and photographs | finger-impressions, palm-print impressions, foot-print impressions, photographs; iris and retina scan; physical, biological samples and their analysis; behavioural attributes including signature, handwriting or any other examination referred to in section 53 or section 53A of the CrPC, 1973 |
| Destruction of measurements | in case of acquittal, discharge or release, if not previously convicted of any offence punishable with rigorous imprisonment of one year or upwards | in case of acquittal, discharge or release, if not previously convicted of any offence punishable with rigorous imprisonment for any term. For convicts, records are to be destroyed from 75 years of collection |

**IS CRIMINAL PROCEDURE IDENTIFICATION ACT 2022 AN ATTACK ON THE RIGHT TO PRIVACY?**

The concepts of justice, fairness, equality, and reasonableness has been embraced by legal systems around the world as the pillars of their countries. They were written as a sacred oath in the illustrious Constitution by our predecessors. They serve as the foundation for all laws made in the nation and are the golden thread that runs through it. In the historic decision of Maneka Gandhi v. Union of India,1 the Hon'ble Supreme Court reaffirmed this, stating that the course of action should be equitable, fair, and reasonable. Since J.S. Mill asserts that "restriction over a person in a civilised society is just only if prevents harm against others".1 we have adopted his philosophy. One side cannot sacrifice justice in order to serve the interests of another.

Criminal procedure (Identification) Act of 2022 to "take measures of convicts and other persons for the sake of identification and Law enforcement organizations are given legal authority under the Criminal Procedure investigation of criminal offences." The Ministry of Home Affairs announced that even though the law was passed earlier this year, it will not take effect until August 4, 2022. Additionally, it nullifies the 1920 Identification of Prisoners Act.

The goal of this act is to obtain a person's fingerprints, footprints, dimensions, pictures, and other identifying information. If the person is fired or dismissed, their name will be removed from the list. The task of maintaining records has been delegated to the National Crime Records Bureau (NCRB). It must provide the information to law enforcement authorities. The states and union territories will provide notification of the collection, preservation, and retention of data under their control. It has amended the Code of Criminal Procedure's Sections 53 and 53A to include provisions relating to the gathering of "biological samples," "behavioural features," blood, semen, hair, swabs, and DNA profiling (CrPC).2 The right to privacy is now recognized as a basic right under the purview of Article 21 following the decision in Justice K.S.

Puttaswamy and Anr. vs. Union of India (UOI) and Ors.3 The Puttaswamy case was decided by the court, where the court noted that informational privacy is a crucial component of the right to privacy. Information privacy is defined as "an individual's claim to control the terms under which personal information, or information identifiable to the individual, is acquired, disclosed, and utilised" by the IITF Principle of the United States.

A person's personal space may be invaded by the collection, preservation, and retention of their data. This act looks to be a step backward in a modern culture where the globe is moving toward the protection of personal data since it blatantly violates the fundamental right to privacy. Despite the fact that Sir James Stephen's well-written Evidence law was rarely changed, it was considered that we needed to keep up with other countries' highly developed legal systems. The Law Commission recommended in its 94th report states that the courts should have the authority to reject evidence if it has been obtained: in violation of social norms and human dignity; if the gravity of the crime, the significance of the evidence, or the urgency of the circumstance are ignored; and whether the collection is justified or not.4

**MAIN ISSUES**

The Act has drawn harsh criticism for being open-ended, having wide provisions without adequate controls, and violating people's privacy. In essence, the new act has broadened

the categories of information that can be gathered during a criminal inquiry as well as the individuals who can authorise the gathering of such information. The Act also specifies the agency that may keep the data as well as the maximum amount of time that it may be kept by that agency. The opposition contends that the Act obviously violates human rights, particularly the rights to privacy and equality, while the government is certain that the Law would allow crime detectives to be two steps ahead of the criminals. This is especially true given the possibility of data misuse in the absence of adequate data protection measures in the proposed law.

Furthermore, the phrase "physical and biological samples" is not defined in the act, which could cause confusion. The phrase is just listed among the items in Section 2 (1) (b) of the act's definition of measurements. In accordance with the new Act, 2022, a Magistrate may now order the gathering of evidence from anyone (and not only an arrested person) to aid an investigation. Previously, a Magistrate could order the measurement of any arrested person in certain circumstances to aid a criminal investigation.

The 2022 statute stipulates that the information will be kept in a single database, the National Crime Records Bureau (NCRB). It may divulge the information to law enforcement authorities. Additionally, states and UTs have the right to request that agencies gather, store, and distribute data in their respective regions. The gathered information will be stored digitally or electronically for 75 years. The Supreme Court outlined the principles of data minimization and storage limitation in the case of Justice K.S. Puttuswamy vs. Union of India, and such a provision for keeping the data for so long as 75 years goes against those principles. If a person is released without a trial or is found not guilty after exhausting all appeals, the database's records will be deleted.8 However, in some circumstances, a Court or Magistrate may order that the details be kept after stating their justifications in writing. In that event, the database will continue to hold the data of persons who are cleared of all accusations, of violating their human rights.

Sec. 4(3) gives State and UT governments the authority to alert the proper agency to collect, store, and share sensitive personal data about residents. It cannot be ruled out that the responsibility for gathering, conserving, and disseminating measurements may be given to a private agency in the absence of any limitations on the notification's scope under section 4(3). The State's responsibility to administer justice would be affected if this amounted to the delegation of the sovereign role of conducting criminal investigations and gathering evidence for such investigations. It is illegal to provide such unguided authority to a private organisation that is not subject to regulations.

**ISSUE - IN THE LIGHT OF CONSTITUTIONAL FRAMEWORK**

Art 14 – and how this act grants excessive delegation of power which is violative of art. 14.

According to this act, measurements must be taken by law enforcement and correctional personnel, and records of those measurements must be collected, stored, destroyed, processed, and disseminated by the NCRB in the interest of "prevention, detection, investigation, and prosecution" of criminal offences. The Act grants the executive branch undue power in many places. It does this in two ways: first, by giving the executive broad rule-making authority with little oversight and transferring legislative duties to the executive; and second, by giving

functionaries under the act (police/prison officers and Magistrates) an excessive amount of discretion over who they may compel to provide measurements, under what conditions, and for what purposes. On the grounds that it exceeded the permitted boundaries when granting powers, a statute may be declared to be ultra vires the Constitution.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Police or jail officers will collect measurements, either voluntarily under sec 3 or at the magistrate's request under sec 5. Rules created by the Central or State governments must specify the procedure for taking these measurements. Sec 3 and 5 offer very little advice regarding the procedure and conditions in which police or prison officers and Magistrates are to use their discretion to order the taking of measurements. In sec 3, measurements must be taken by law enforcement or prison officials 'if required.

According to the ruling in In re Delhi Laws Act, the legislature cannot abandon its legislative duties and must take care to prevent the executive from acting as a parallel legislature when it delegated its authority. An important legislative role is selecting and deciding the legislative policy that will underpin a piece of legislation, as well as legally adopting that policy into law. As long as the general policy is determined and standards are established, allowing the executive to act within set parameters, it is possible to delegate the working out of specifics to the executive. Given the absence of statutory direction regarding how this "requirement" is to be decided and the lack of any guidance regarding what the Rules should give in terms of the method of taking measures, the stated officers have entire and unfettered discretion.

This Act allows the police and the magistrate excessive and overbroad discretion under sections 3 and 5 to make administrative judgments and pass orders, respectively. By delegating unguided legislative power to set rules under sections 4 and 8, it abdicates its legislative duties. Legislation restricting fundamental rights must be sufficiently clear and precise regarding the degree, type, and scope of the interference permitted, as well as have enough protections to prevent governmental abuse of authority. This means that while executive discretion has the potential to limit rights and freedoms, the legislation must not provide it an undue amount of leeway. As long as there are rules limiting how discretionary powers are used, the mere grant of discretion is not causing alarm. However, "total and unchecked discretion degenerates into arbitrariness."

In the case of Shayara Bano v. UOI For the purpose of invalidating legislative law, Article 14 established the separate ground of manifest arbitrariness. A statute is plainly arbitrary, according to Justice Nariman's observation in that case, if it is "done by the legislature capriciously, arbitrarily, and/or without adequate governing principle... [the law is] excessive and disproportionate." The majority opinion in the Aadhar 5-J decision recognised this approach as a basis for rejecting the law. We believe that the Act is obviously arbitrary because it repeatedly fails to provide any justification or guiding concept.

The proviso of section 3 of the act categorizes people who have been arrested based on the gender and age of the people who were the targets of their alleged crimes as well as the severity of the punishment assigned for that alleged crime. After classifying those arrested, the proviso allows those arrested for crimes carrying a seven-year or longer sentence, or those arrested for crimes against women or children, to be forced to provide their biological samples; all other arrested people, however, may only be forced to provide measurements other than biological samples. There is no logical connection between the investigation's goals and the victim's gender/age classification used to justify the need for biological samples. First, we argue that biological samples taken from the arrested individual are valuable for the inquiry in each given case regardless of the victim's gender or age. Second, it is illogical to assume that the victim's age or gender will have any bearing on whether taking such biological samples from an arrested person can help police investigators in general.

**Right against self-incrimination Art 20(3)**

Under Sec 2(1)(b) The word "behavioural attributes" does not have a specific definition in forensic science, which raises questions about

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 4 AND ISSUE 2 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

its very broad, nebulous nature. It is up for interpretation whether or not to incorporate metrics of a testimonial nature. By using a coerced psychiatric evaluation, for instance, "behavioural characteristics" as measurements may be coercively taken from a person. Such an assessment would be considered a "testimonial compulsion" if it results in any incriminating admissions. In the light of the ruling given by SC in Selvi v state of Karnataka a broad reading of "behavioural attributes" would even be taken to forbid procedures like brain mapping, polygraph testing, and narco-analysis, all of which were specifically forbidden.

The fact that the clause is written as an inclusive definition only serves to support this interpretation. In a number of judgments, the Supreme Court has ruled that inclusive definitions are to be read as enlarging and enhancing the common meaning of words, particularly where the extended statutory meaning may not correspond to the ordinary or natural meaning. As a result, the term "behavioural traits" may be construed to include both what its common meaning suggests and the measurements indicated in Sections 53 and 53A of the CrPC, as well as handwriting and signatures.

**Right to privacy**

The right to privacy is categorically declared as a fundamental right protected by Article 21 of the Indian Constitution by a nine-judge Supreme Court bench in Puttaswamy-I. When ruling on the constitutionality of the Aadhaar framework, the five-judge bench in Puttaswamy-II reaffirmed that informational privacy (including biometric and other personal data) is a part of the right to privacy under Article 21. Retaining data that contains private information constitutes an infringement on that right.

The majority of the biometrics covered by the act, including finger, palm, and footprints, iris and retina scans, physical and biological samples, and their analyses, constitute personal information because they are used to identify specific people. Additionally, the ECtHR has acknowledged that the systematic collection of voice samples and photos for the goal of identifying individuals through data processing violates their right to privacy. Due to the broad collection and use of such personal information as contemplated by the act, the right to privacy is directly impacted.

**CONCLUSION**

Although the Criminal Procedure (Identification) Act, 2022 has a clear intention, it leaves some decisions up to the discretion of the authorities, which makes it ambiguous and has a wider scope. Such broader implications run the risk of making it an administrative target of impunity, which would be disproportional and dangerous for the general populace. By undermining a person's right to life and liberty under Article 21 of the Constitution, this Act seeks to make it legal for the State and its enforcement authorities to violate their constitutional rights which is The majority of the biometrics covered by the act, including finger, palm, and footprints, iris, and retina scans, physical and biological samples, and their analyses, constitute personal information because they are used to identify specific people. Additionally, the ECtHR has acknowledged that the systematic collection of voice samples and photos for the goal of identifying individuals through data processing violates their right to privacy. Due to the broad collection and use of such personal information as contemplated by the act, the right to privacy is directly impacted. A convicted prisoner still has the right to life and liberty under Article 21 of the Constitution even while confined to jail and the jail authorities have no right to punish, torture, or treat them unfairly in any other way without their express permission or orders of the court Stated by SC in the case of Sunil Batra vs. Delhi administration (1979). 20 However, when a provision grants a warder the authority to collect samples from prisoners housed in the jail under their supervision without fully describing how they might do it, it essentially gives them carte blanche to do anything they want.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

## CHAPTER-IV

## THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022 VIOLATES VARIOUS CONSTITUTIONAL MANDATES

Lok Sabha and Rajya Sabha had respectively passed the Criminal Procedure(Identification) Bill, 2022. With the President giving his assent to the Bill on April 18, it was duly notified by the Government, bringing the Act into force. The Act seeks to authorise collection, analysis and storage of biometric and personal data of any person arrested by executive authorities including convicts. It is a modification of the Identification of Prisoners Act, 1920, which stands repealed through Section 10(1) of the 2022 Act.

The Act widens the power of State and its enforcement agencies during a criminal investigation, with regard to the taking of biometric and other biological data of any person arrested by the police, including persons detained under preventive detention laws. While the term 'any person' doesn't specify exactly who are to come under the purview of this Act, it widens the scope of its application, leaving it to the whims and fancies of the State and its enforcement agencies.

When such coercive criminalisation of an individual is perpetuated without any consequences for the authorities, it robs the individual of a free and fair trial, taking away their right to life and liberty under Article 21 of the Constitution, as a result.

But what makes it dangerous is the criminalisation of an individual's refusal to give such data, making it an offence under the Act. Such criminalisation is not only against individual autonomy, but directly impinges on an individual's right to fair trial under Article 21 of the Constitution of India.

I argue here that the Act, in its essence, is not only antithetical to basic criminal law jurisprudence, but simultaneously violates various Constitutional mandates, with its vague and overarching provisions.

**Right to bodily integrity and individual autonomy**

The 87th Report of the Law Commission of India on the Identification of Prisoners Act, 1920 discussed the ways in which the erstwhile Act needed some modifications. It emphasised that modifications were needed to strike a balance between the rights of an individual and that of the State, in the interest of society.

The 2022 Act allows police officers to collect fingerprints, footprints, biological samples, behavioural attributes including signatures, handwriting and examinations under Sections 53 and 53A of the Code of Criminal Procedure, of any arrested person, including convicts. Such data also includes blood, semen, hair samples, swabs and analyses such as DNA profiling.

While the refusal to share such data is an offence under this Act, an exception also states that any person arrested under any law will not be obliged to provide such data, except when they are arrested for any offence committed against women and children. Such criminalisation at first glance violates an individual's right against self-incrimination under Article 20(3) of the Constitution, amounting to forcible extraction of testimonial response, which further impinges on the right to life and liberty under Article 21 of the Constitution. In fact, the exception becomes redundant in light of Section 6(1) of the Act, which states that, "If any person who is required to allow the measurements to be taken under this Act resists or refuses to allow taking of such measurements, it shall be lawful for the police officer or prison officer to take such measurements in such manner as maybe prescribed", especially when Section 6(2) makes it an offence under Section 186 of the Indian Penal Code, while Section 7 absolves the authorities of any trial or proceeding for doing anything under the Act.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

The Supreme Court, in Selvi versus State of Karnataka (2010) held that the protection against self-incrimination under Article 20(3) of the Constitution would include the right to a fair trial and substantive due process, and that this right would not only be confined to the courtroom, but in all cases where the charge may end in a prosecution. So, when such coercive criminalisation of an individual is perpetuated without any consequences for the authorities, it robs the individual of a free and fair trial, taking away their right to life and liberty under Article 21 of the Constitution, as a result.

Under this Act, a Magistrate has the power to order for the collection of personal data from any person not arrested, to aid in a prevailing investigation, making it discretionary on the part of the Magistrate to not provide any reason for the same. This is a contravention of Article 14 of the Constitution, which gives a person right against arbitrary and unreasonable State action.

Along with the Officer in charge of a police station or someone with the rank of a Head Constable or above, the Head Warder of a prison can also order for such collection of data, which puts them directly in the process of investigation and increases their power over the undertrials and convicted prisoners in the prison under their authority.

The Supreme Court, in Sunil Batra versus Delhi Administration (1979) explicitly stated that during a prisoner's time in jail, the jail authorities do not have any right to punish, torture or in any way discriminate against them without the explicit permission or orders of the court, and that a convicted prisoner still has the right to life and liberty under Article 21 of the Constitution, even when inside of a jail. But when a provision provides a warder with the power to collect samples from convicts in the jail under their management, without adequately specifying the way in which they can do it, it gives them a free pass to do anything. Such a free pass makes the provision contrary to the very essence of the right to life and liberty jurisprudence upheld by Sunil Batra.

Basically, vague, unspecified coercive measures by the authorities are brought within the ambit of this Act by bringing them within the due procedure of law.

**Administrative discretion or overreach?**

Administrative actions demand that nothing can be done on the part of the authorities without giving adequate reasons for the same. It is one of the essential rules of natural justice. However, under this Act, a Magistrate has the power to order for the collection of personal data from any person not arrested, to aid in a prevailing investigation, making it discretionary on the part of the Magistrate to not provide any reason for the same.

This provision is a direct contravention of Article 14 of the Constitution, which gives a person right against arbitrary and unreasonable State action. This unreasonable action further violates an individual's right to fair trial, whether they are the main accused or not.

**Right to privacy: information or dissemination of public data?**

The Supreme Court, in Justice K.S. Puttaswamy (Retd.) versus Union of India (2017), declared the right to privacy as a fundamental right under Article 21, stating that measures which are against the privacy right of an individual have to be reasonable and proportionate to be legal. It expressly stated that autonomy over personal decisions, bodily integrity as well as personal information forms a part of this. In fact, then Justice S.A. Bobde observed that consent is essential for distribution of inherently personal data such as health records.

The 2022 Act provides for collection of finger impressions, palm- print impressions, foot-print impressions, photographs, iris and retina scans, and other biological samples for analysis and storage. This data will be stored by the National Crime Records Bureau for 75 years, and can be accessed by various law enforcement agencies. Without a proper mechanism to regulate such

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 4 AND ISSUE 2 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

vast public data, this provision makes everyone vulnerable in this age of a widespread digital domain. Section 4 of the Act provides that a person who has no previous record of conviction and is released without trial or has been discharged or acquitted by the court, can have their records destroyed, which is again subject to the discretion of the Magistrate or court, after citing valid reasons.

The Supreme Court, in Common Cause versus Union of India (2018), ultimately upheld the right of an individual against forceful intrusion into one's body, keeping intact bodily integrity and autonomy of the individual. In fact, in Selvi, it had held that compulsory neuroscientific tests amount to testimonial compulsion and violates the rule of self- incrimination as a result, and that such tests would have to meet the standard of 'substantive due process' for placing restraints on personal liberty. It further held that the main purpose of the right against self- incrimination is to ensure reliable testimony, since involuntary statements mostly turn out to be inaccurate, besides violating a person's dignity and integrity. It even clarified that this right protects persons who have been formally accused, those who are examined as suspects in criminal cases, witnesses who apprehend that their answers could expose them to criminal charges in an ongoing investigation, or in cases other than the one being investigated.

The collection and analysis of data under the Act borders on executive arbitrariness, when an individual's will to not share such data is explicitly criminalised. In fact, storing of such data has no reasonable justification, making it disproportional to the larger context of justice.

So, when the 2022 Act explicitly talks of collecting biological samples as well as analysing them, it violates this mandate, while a Magistrate's power to call for investigating anyone for a case on their own whims and fancies certainly takes away from them the right of a fair trial. It is especially dangerous, when such data can be stored for 75 years and used by any of the state governments for their own use and purpose.

It even violates the three-fold test upheld by the Supreme Court earlier this month in Jacob Puliyel versus Union of India, after analysing K.S. Puttaswamy. While the first condition provides that to encroach upon anyone's privacy, there has to be the existence of a valid law, the second condition provides that the nature and content of such law should fall within the sphere of reasonableness mandated by Article 14. Lastly, it provides that the means adopted by the legislature are to be proportional to the object and need sought to be pursued by it. In the present case, while one may argue that the collection of such data is in consonance with the protection of an individual's privacy, it doesn't change the fact that the collection and analysis of such data borders on executive arbitrariness, when an individual's will to not share such data is explicitly criminalised. In fact, storing of such data has no reasonable justification, making it disproportional to the larger context of justice.

Furthers pre-conceived bias against individuals detained under the preventive detention laws

Preventive detention laws work at the whims and fancies of the executive in India. Without going into the rigours of the criminal law process, it entitles the police to detain anyone on a simple suspicion of them committing any act prejudicial to the State. The arrestees don't enjoy the fundamental rights guaranteed under Article 22(1) and (2) of the Constitution. These Articles protect a person against arrest and detention in general.

When a society differentiates between different classes of offenders, taking away their basic rights which are in general available to others, it perpetuates a systemic indifference to their right to life and liberty, which allows for basic rights to be violated under the garb of protection of the State. So, when such a person, under a preventive detention law, is already alienated from a free and fair process, Act like this, which further impinges on a person's right

against self- incrimination, makes them even more vulnerable under the present process.

The Criminal Procedure (Identification) Act, 2022 is clear in its intent and yet leaves certain things to the imagination of the authorities, making it vague and wider in its scope. Such wider connotations can turn it an object of administrative impunity, which makes it disproportionate and dangerous in its wake for the people as a whole. What is more dangerous here is the fact that this Act is trying to make the violation of constitutional rights by the State and its enforcement agencies legal, by compromising a person's right to life and liberty under Article 21 of the Constitution.

**The new Criminal Procedure (Identification) Act and why it h ..**

The Criminal Procedure (Identification) Act, 2022 (2022 Act) was enacted with the aim of authorizing law enforcement agencies to take measurements of convicts and other persons for the purposes of identification and investigation in criminal matters. The 2022 Act, which received the President's assent on April 18, 2022, came into force on August 04, 2022. The 2022 Act repealed the Identification of Prisoners Act, 1920 (1920 Act), which is a colonial law that permitted the collection of fingerprints, footprint impressions, and photographs of convicts and others. In this note, we summarize and analyze the key features and challenges to the 2022 Act.

Key features of the 2022 Act

- Definition of measurements

o The 2022 Act has redefined and broadened the scope of 'measurements' to include finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973 (CRPC).

o The 1920 Act only allowed measurements of finger and foot-print impressions.

- Taking of measurement

o The 2022 Act covers the collection of measurements not only from convicted persons but also persons under preventive detention or arrested for any punishable offence.

o The 2022 Act authorizes the police or prison officials to compel a person to give measurements.

o In order to aid in an investigation or proceeding under the CRPC, the 2022 Act empowers a Magistrate to pass an order directing any person to give measurements.

o However, Section 3 of the 2022 Act carves out an exception for person(s) arrested (except for an offence committed against a woman or a child, or for any offence punishable with imprisonment for a period of seven years or more), from allowing the taking of their biological samples.

- Collection, storing, preservation of measurements and storing, sharing, dissemination, destruction and disposal of records

o The 2022 Act empowers the National Crime Records Bureau (NCRB) to collect, store, preserve and destroy the records of measurements at a national level. The NCRB is also authorised to share such records with any law enforcement agency.

o The data collected will be retained in digital or electronic form for 75 years. The records will be destroyed in case of persons who are acquitted or released without trial; however, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.

- Resistance to allow taking of measurements

o The 2022 Act attaches criminal liability for resistance or refusal by any person to allow

taking measurements. As per Section 6 of the 2022 Act, resistance or refusal shall be deemed to be an offence under Section 186 of the Indian Penal Code, 1860 which provides punishment for obstructing public servant in discharge of public functions, wherein the person may be imprisoned for a term which may extend to 3 months or with fine which may extend to INR 500 or both.

- Power to make rules

o Under the 1920 Act, the power to make rules relating to criminal investigations was entrusted with the State governments; however, the 2022 Act vests the rule making power in the Central government and the State government.

Key challenges of the 2022 Act

- The terms such as 'analysis', 'biological samples' and 'behavioral attributes' used under the definition of 'measurements', do not have a set threshold, leaving them open to wide interpretation and thus, leading to transgressing the right against self-incrimination provided under Article 20(3) of the Constitution of India.

- The blanket mandate to collect measurements under the 2022 Act restricts the fundamental right of privacy without proving proportionality of the Act despite the landmark decision in K.S. Puttaswamy v. Union of India1 that laid down a four-fold test of proportionality to satisfy the infringement of the right to privacy.

- The 2022 Act attaches criminal liability under Section 186 of the Indian Penal Code, 1860 for resistance or refusal by any person to allow taking measurements, thereby amounting to forcible extraction of testimonial response. Such criminalization is in violation of an individual's right against self-incrimination under Article 20(3) of the Constitution of India and further impinges on the right to life and liberty under Article 21 of the Constitution of India.

- By empowering a Magistrate to pass an order directing any person to give measurements, the 2022 Act makes it discretionary on the part of such Magistrate to provide any reason for it. The same is in contravention of Article 14 of the Constitution of India, which gives a person right against arbitrary and unreasonable State action.

- The 2022 Act does not make any distinction between the categories of accused persons based on the nature of offences and thus, it makes a person accused of any petty offence to be treated at par with a person accused of heinous crimes.

- The 2022 Act envisages record-keeping by the NCRB but does not specify how they would be created and managed. Similarly, there is distinct lack of clarity regarding the means of securing the data and the manner in which the records are to be shared.

- The 2022 Act leaves the door open for abuse of powers by providing discretionary powers to the police or prison officials to take measurements 'if so required'.

- By extending the power to legislate and/or make rules under the 2022 Act to the Central government, it may give rise to conflicts with State authorities who are also empowered under the 2022 Act.

- The 2022 Act neither provides any specific guidelines nor elucidates any procedural safeguards for collection, storage, processing, sharing and destruction of measurements.

- The 2022 Act is also in violation of right to privacy under Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights, 1966 which provides protection to persons against

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

# CHAPTER-V

# Conclusion

The "Identification of Prisoner's Act,1920" was replaced by Criminal Procedure (Identification) Act, 2022, which was passed by Parliament earlier within 2022. Act authorised collecting of measurements for purpose of identification on those who have been convicted, who have been arrested, who are within custody, or who are currently involved within criminal proceedings.

The range of measurements, which was previously limited to finger plus foot prints plus images, has now been expanded to encompass physical plus biological samples, finger, palm, plus footprint impressions, iris, plus retina scans, as well as behavioural characteristics, which may include handwriting. "ambit of persons" who are permitted to take measures was likewise increased by Act.

The "Identification of Prisoner's Act,1920" was replaced by Criminal Procedure (Identification) Act, 2022, which was passed by Parliament earlier within 2022. Act authorised collecting of measurements for purpose of identification on those who have been convicted, who have been arrested, who are within custody, or who are currently involved within criminal proceedings.

The range of measurements, which was previously limited to finger plus foot prints plus images, has now been expanded to encompass physical plus biological samples, finger, palm, plus footprint impressions, iris, plus retina scans, as well as behavioural characteristics, which may include handwriting. "ambit of persons" who are permitted to take measures was likewise increased by Act.

The government should concentrate on introducing a Data Protection Bill that protects sensitive information of general public within order to address problems with Act. government should make an effort to clarify any unclear terms within Act. Additionally, there is a need to raise knowledge among authorities working within rural plus underdeveloped areas about how to handle plus apply current technologies on a daily basis when taking measurements.

In order to ensure consistency across nation's databases, government should also publish a set of guidelines plus protocols to direct investigating officers within establishing a standard for measurements obtained.

As private sensitive information on public cannot be shared with any private entity because this could impede state's capacity to provide justice, government also needs to address issue of delegating state power to private entities. Criminal Procedure (Identification) Act, 2022 is a commendable effort by government to update criminal laws of nation, but it needs to be revised to ensure that it doesn't jeopardise interests of general public or infringe upon their fundamental rights. If problems are fixed, Act will undoubtedly contribute to strengthening both effectiveness plus efficiency of investigative agencies.

## REFERENCES

## BIBLIOGRAPHY

### A. Primary Sources

Statutes and Conventions:

1. Dowry Prohibition Act, 1961. Indian Penal Code.
2. The Criminal Law Amendment Act, 2013.
3. The Immoral Traffic in Person Prevention Act, 1986.
4. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.
5. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. Universal Declaration of Human Rights, 1948.
6. International Covenant on Civil and Political Rights. Criminal Ordinance 1944.

**Case laws:**

1. Alim Jam Bibi v. Emperor, AIR 1937 Cal 578.

2. Aveek Sarkar and another v. State of West Bengal and others, AIR 2014 SC 1495.
3. Apparel Export Council v. A.K. Chopra, AIR 1999 SC 625. Anu Kaul v Rajiv Kaul (2009)13 SCC 209.
4. Anjali Kapoor v. Rajiv Baijalal, (2009) 3 SCC 322.
5. D.K. Basu v. State of West Bengal, (1997)1 SCC 416.
6. Mahendra Nath, (1935) ILR 62.
7. Maneka Gandhi v. Union of India, AIR 1978 SC 597. NorshiwanIrani v. Emperor, 1935 CrLj 718.
8. Roshan, AIR 1954 ALL 51.
9. Sheikh Zakhir v. State of Bihar, 1983 Cr Lj1285. Vishaka v. State of Rajasthan, AIR 1997 SC 3011. A.v.H.AIR 1993 Bom 70.
10. Dhananjoy Chaterjee v. State of West-Bengal (1994) 2SCC 220. Bodhiswattwa Gautam v. Subhra Chakraborty (1996) 1 SCC490. Pratap Misra v. State of Orissa (1977) 3 SCC 41.
11. Laiq Singh v. State of U.P. (1970) 2 SCC 561. Tukaram v. State of Maharastra (1979) 2 SCC 143.
12. State of Punjab v. Gurmit Singh (1996) 2 SCC 384. Sikkim v. Padam Lal Pradhan (2000) 5 SCC 30.
13. Bhupinder Sharma v. State of H.P (2003) 8 SCC 551.

**B. Secondary Sources:**

Books:

1. Chandra, U "Human Rights" 80th edition, Allahabad law publication (2010).
2. Chakrabarti, N.K. &Shachi Chakrabarty(eds), "Gender Justice" First Edition, R Cambray and Co. Pvt.Ltd (2006).
3. Dhanda, Amita & Archana Parashar(eds)"Engendering: Essays in Honour of Lotikasarkar", First Edition, Eastern Book company (1999).
4. Gaur, K.D. "The Indian Penal Code" 3rd edition, universal publishing company Pvt. Ltd (2004).
5. Mccoubrey, Hilaire & Nigel D White, "Text Book on Jurisprudence" First Indian edition, Oxford university Press (2002).
6. Lloyd, Dennis (Baron Lloyd of Hampstead), "Introduction to Jurisprudence", 7th edition, Sweet and Maxwell (2001).
7. Fitzgerald, PJ (ed), "Salmond on Jurisprudence" 12th edition Universal Law Publishing Co Pvt. Ltd. (2004).
8. Kelkar, R.V., "Lectures of Criminal Procedure" 4th edition, R. Cambray and Co. Pvt. Ltd. (2011).
9. Ormrod, David, "Criminal Law" 11th Edition, Oxford University Press.
10. William, Glanville, "Text Book of Criminal Law" Second Edition, Universal Law Publishing Co. Pvt. Ltd.
11. Gaur, KD, "Criminal law Cases and Materials", 7th Edition, Lexis Nexis.
12. Rashid, MA, "Handbook on offences and Punishment", 2nd edition, Lexis Nexis Butter Worths Wadhwa Nagpur
13. Pillai, P.S. Atchuthen, "Criminal law" eighth edition, Tripathi Private Ltd.
14. Molan, Mike, "Cases and Materials on Criminal law", 3rd Edition, Cavendish Publishing"
15. Menon, N.R. Madhava, "Criminal Justice India SeriesVolume1-10," West-Bengal 2001.
16. Mackinon, Catherine. A, "Feminism Unmodified, Discourses in Life and Law", Harvard University Press.
17. Meade. A. Teresa And Merry Wiesner Hanks "A Comparison to Gender History" Black weal publishing 2006.
18. Bridgeman, Jo and Susan Millins, Sweet and Maxwell 1998.

**C. Articles from Journal and Edited Books:**

1. Chakraborty, Nayana "Abetment of suicide under I.P.C. and its impact in India" Calcutta Law Times 2014 VOL I at page 17.
2. Chadha, Neeru "Levelling the Workplace for Women Workers: Equal remuneration and Maternity Benefits", "Engendering

Essays in honour of Lotika Sarkar" Eastern Book Co. Pvt. Ltd (1999) at p183.
3. Goswami, Mukul "Anti Dowry Laws and their present Implications" Indian Human Rights Law Review, Vol.4, June 2013 at p 46.
4. Kelman, Mark "A guide to Critical legal studies" Harvard University Press (1987).
5. Kumari, Ved "Gender Analysis of Indian Penal code", "Engendering Essays in honour of Lotika Sarkar" Eastern Book Co. Pvt. Ltd (1999) at p 139.
6. N, Kottapallo Aparna "The State and women's emancipation, role of judiciary and executive", Indian Human Rights Law Review, Vol 4, June 2013 at page 11
7. Pillai, K.N. Chandrasekharan "Women and Criminal Procedure", "Engendering: Essays in Honour of Lotika Sarkar", Eastern Book Co. Pvt. Ltd (1999) at p161.
8. Rai, Akhileshwar "Women facing sexual harassment at workplace an overview" Law profiles vol.4, Issue 7 July 2013 at page 7.
9. Ramanathan, Usha "Reasonable Man, Reasonable Women and Reasonable Expectations" "Engendering Essays in Honour of Lotika Sarkar" Eastern Book Company Pvt. Ltd (1999) at p 33.
10. Singh, Sulakhan, "Reforming Criminal Justice System" 2013CRILJ Journal VI p 81.
11. Prerna Desu Sateesh, "Rarest of The Rare Cases" 2013cRILJJOUR/1
12. Bhaumik. Saurav "A Doctrinal Contemplation of Honour Crimes from The Rarest of Rare" Doctrine CRILJ 2013 186.
13. Tripathi, Uma," Prevention of Crime and Social Reintegration of Female Criminals-A New Approach CRLJ 2014 Journal 145.
14. Sirohi, Sanjeev, "Registration of FIR ins mandatory in cognizable offences" CRILJ 2014 Jour 152.
15. Sirohi, Sanjeev, "Can Circumstantial Evidence Alone Form The basis OF Conviction?" CRILJ 2014 Journal 166.
16. Deshpande, M.S "Protection of Human Rights by Invoking Compensatory Jurisdiction Courts". CRILJ 2014 Journal 2014 p 49.
17. Mishra, Dr. Prakash Chandra "Victim Compensation Scheme: An Aspect of Modern Criminology" CRILJ 2014 Journal.p136.
18. Kumar, Anoop, "Death Penalty for Sexual offences" CRILJ 2013 III p Journal 33.
19. Agnes, Flavia "Controversy Over age of Consent" Economic and Political weekly," Vol XLVIII p 10.
20. Olsen, Frances 96 Harvard Law Review 1497,
21. Banerjee, Amit "Rape: A Crime against Humanity" CRILJ 2013 Journal p141.
22. Rai, Manish Kumar "Violence Against Women: "A Multidisciplinary Approach" CRILJ 2013 Journal p 89.
23. Sirohi, Sanjeev "Section 497 Of IPC Must Be Amended" CRILJ 2013 p Journal p 78.
24. Srivastav, Mamta "Constitutional Provisions for Women's Right" AIR 2014 Journal 193.
25. Larson, Jane E "Women Understand So Little, They Call My Good Nature Deceit" A Feminist Rethinking of Seduction"93 Columbia Law Review 374.
26. Agnes, F.1991. "A Toothless Tiger: A Critique Of the family Courts" Manushi.No-66:9-15.
27. Agnew, V 1998. "Tensions in Providing Services to South Asian victims Of Wife abuse in Toronto." Violence against Women 4(2):153-179.
28. An interview with Justice C.S. Dharmadhikari on legal aid service scheme in Maharastra. 1996. The Lawyers Collective1(11 and 12):9-10
29. Apte, M, Dave, A and Adhikari, T 1990. "Quick Appraisal of Family Counselling Centers and Voluntary Action Bureau." Project Report. Bombay: Tata Institute of Social Sciences.

30. Bakshi, P.M. 1994 "Legislative response for tackling domestic violence" The Lawyers Collective 9 (1) :13-14.
31. Banerjee, S 1995. "A prostitute by birth" The Pioneer (April 9).
32. Bhandare, N.1998 "Dowry legislation: double-edged sword" India today (May 18).
33. Gandhi, A. 1997 "Violence against Women, with reference to 498A and 304B, Indian Penal Code" Indian journal of social work58(4):582-598.
34. Bavaadam, L.1993 "Do you beat wife" Blitz (September 11). Vashist, Ankita "A Marriage Be It Valid or Invalid: A Dowry is a Dowry" Indolia, Bhumika "Chained Women: Life Behind Bars."
35. Solanki, Gopika And Geetanjali Ganguli "Defining Domestic Violence and Women's Autonomy in law".
36. Akriti, "Girl Child in Prostitution".
37. Vashist, Latika "Law and Obscene Image: Reading Aveek Sarkar v. State of West Bengal.
38. Manocha, Akshita "Menace of Eve-teasing: The Problem and solution."
39. Jain, Annie "Protection of Women from domestic Violence under domestic Violence Act, 2005.: A Remedy for Broken Relationship."
40. Hargunani, Shivam and Akshita Shrivastava: "Sexual Harassment at Workplace".
41. Upadhyay, Prasata "Women Empowerment in India: Liberal Feminism and Legal Interventions".
42. Rao, Srinivasa, "Women Rights Are Human Rights: Role of Judiciary to Protect Rights of Women and Girl Child".

**D. Internet Sources:**

1. https://prsindia.org/billtrack/the-criminal-procedure-identification-bill-2022
2. https://thewire.in/rights/criminal-identification-act-surveillance
3. https://www.scconline.com/blog/post/2022/09/20/criminal-procedure-identification-rules-2022/