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**THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022-**  
**WHAT, WHY & ISSUES?**

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**ABSTRACT**

Crime, a word which is one of the most used words nowadays but still has no proper definition, over time many scholars, lawyers, judges, and many others tried to define it in their way. The crime rate in India is increasing like petrol prices in India and more and more criminals are getting caught every day. Many new criminals are emerging every other day and that's why a new law is needed to track down all the new and old criminals to reduce crime all over India. Law is a dynamic subject, it needs to change with the changing times and that's why the Identification of Prisoners Act, 1920 has been replaced with the Criminal Procedure (Identification) Bill, 2022. All laws are made with an aim of long-term benefit to society, and this law is one of the first amendments to the Identification of Prisoners Act, of 1920, over a long period, to be exact, after 102 years. This bill is mainly passed having into consideration the increasing number of crimes in India and the delays in investigation and identifying the actual criminal due to lack of evidence related to the convicted person, about which the earlier Identification of Prisoners Act of 1920 was not so helping in favor of the law enforcement and authorities.

**What?**

The Criminal Procedure (Identification) Bill was introduced in the Lok Sabha on 28<sup>th</sup> March 2022 to authorize for taking measurements of convicts and other persons for the purpose of identification in criminal matters and to preserve records and for matters connected therewith and incidental thereto. It finally passed on 6<sup>th</sup> April 2022 from both the houses of parliament. It would allow the police and personal authorities to collect, store and analyze physical and biological samples, including retina and iris scans. It seeks to repeal the Identification of Prisoners Act, 1920 which provided for the collection of only fingerprints and footprints. The

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Act authorizes the collection of certain identifiable information about specified persons such as convicts for the investigation of crime. The Bill expands the ambit of such details, and persons whose details can be taken. It authorizes the National Crime Records Bureau to collect, store and preserve these details.

Measurements in simple terms mean finger impressions, palm print and footprint impressions, photographs, iris and retina scans, physical, and biological samples, and their analysis. The Bill empowers the National Crime Records Bureau (NCRB) to collect the details about the people covered under the Bill from state governments, union territory (UT) administrations, or other law enforcement agencies, storing and destroying the details about specified persons at the national level, processing the details with relevant criminal records and disseminating the details to law enforcement agencies. Power is delegated under this statute by empowering a magistrate to direct any person to give measurements; a magistrate can also direct law enforcement officials to collect fingerprints, and footprint impressions and photographs in the case of a specified category of convicted and even non-convicted persons. Then empowering police or prison officers to take measurements of any person who resists or refuses to give measurements and the analysis should be followed specified in section 53 or section 53A of the Code of Criminal Procedure, 1973. If a notable feature is to be added then that would be the menace of Record. That is the National Crime Records Bureau (NCRB) will be the repository of physical and biological samples, signatures and handwriting data that can be preserved for at least 75 years. The record of these measurements will be retained in digital or electronic form for a period of 75 years from the date of collection. The court or Magistrate, for reasons to be recorded in writing, can direct agencies to maintain the records. The records are to be destroyed in the case of any person who has not been previously convicted of an offense punishable under any law with imprisonment for any term.

The total time period for which the bill requires the details collected to be retained in digital or electronic form for 75 years from the date of collection. The record may be destroyed in the case of persons who have not been previously convicted and are released without trial, discharged, or acquitted by the court, after exhausting all the legal remedies.

When there is resistance to giving details then as per the bill, resistance, or refusal to give details will be considered an offense under the Indian Penal Code, 1860. Resistance to our refusal to allow the taking of measurements under this act shall be deemed to be an offence under section 186 of the Indian Penal Code (IPC). No suit or other proceedings shall lie against

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any person for anything done, or intended to be done in good faith under this Act or any rule made there under. The central government or state government may, by notification in the Official Gazette, make rules for carrying out the purposes of this act. er of collection, storing, preservation of measurements and sharing, dissemination, destruction, and disposal of records under subsection (1) of Section 4.

Persons authorized to collect details under the Act are, the police officers who oversee a police station, conduct investigations under Cr.P.C., or are at least at the rank of a Sub – Inspector. A Magistrate may direct a program to give details for the purpose of an investigation or proceeding under the Cr.P.C.

### **Why need such a Law?**

The world has undergone technological and scientific changes, and crime and restraint have increased. Advanced countries across the globe are relying on new measurement techniques for reliable results. With changing times process of catching criminals should also get upgraded. It was felt necessary to expand the ambit of persons whose measurements can be taken as this will help to investigate agencies gather sufficient legally admissible evidence and establish the crime of the accused person. The bill will not only help our investigation agencies but also increase prosecution. There is also a chance of an increase in conviction rates in a course through this. Other foreign countries like United States of America have somehow similar laws, which help and still helping their authorities to track down the real culprits.

### **Issues**

No law is perfect even if it is amended several times because there will always be a certain part, rights, community, or subject remains that gets negatively affected because of the passing of the law, a section that is compromised to get the statute to get going and benefit the society in the long run. Issues always arise, sometimes they are logical and need consideration of the legislature, but sometimes these issues are all idiotic comments passed by an illiterate who didn't understand what the law is about. Some of those logical issues which came into sight from the date this particular act are introduced in Lok Sabha are–

1. Technological Issue-

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Today's world is all about data and it is mostly technology-driven, which makes it more prone to leakage or cyber-attacks. Agency looking into the collection and storage of all the data specified under the Criminal Procedure (Identification) Act, 2022 is the National Crime Records Bureau (NCRB). All the measurements from different state governments and administrations of union territories are to be collected by NCRB. In, 2020 only more than 1.1 million cyber-attacks were reported across India, which is a clear indication of how much danger is lurking around our confidential data, moreover as India is a rapidly rising country in all sectors, enemy countries are also trying to break our security all the time both in the physical world and virtual world. Accidental leakage of private data or investigative data in media or to the general public can also be a dangerous situation. This has actually happened, Federal Bureau of Investigation (FBI)'s large scale leakage in the Amerithrax investigation, leaving behind five deaths, nineteen injuries, and mass anxiety throughout the U.S.<sup>2</sup> India, where the Right to Privacy is realized not so long ago and comes under article 21 of the Indian Constitution will play a major role in these type of leakages. A properly secured system with requisite additional facilities is also required to collect, manage, analyze and share those measurements whenever needed. Different State Crime Record Bureau (SCRB)'s to work alongside NCRB in the collection, and management of the data, as they will get the benefit of their specific jurisdictional information which can become a hindrance in the working of NCRB.

## 2. Constitutional Issue-

The problem of the emergence of the parallel legislature is due to more than the required delegation of legislative powers to the magistrate, police, and prison officers. There's an excessive amount of arbitrary powers given to magistrates, police, and prison officers which certainly tends to break the preset limits which are already approved in the case of delegated powers. Guidelines guiding the officials in the collection of the measurements, and framing of rules that are surely missing, which goes against the judgment of Subramanian Swamy v. Union of India, where it is observed that excessive delegation of powers should always be kept under check by rules and guidelines or else that act giving powers would be considered in violation of article 14. Even in CrPc, it is stated that police officials can go through a full-fledged inspection of the convicted

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<sup>2</sup> THE JURISPRUDENCE OF POLICE INTELLIGENCE FILES AND ARREST RECORDS James B. Jacobs

person for the purpose of collecting evidence, and on the other hand in this particular act, it is not clear as well as no guidelines given for it instructing the magistrate when to use this power and when to not, for collection of measurement is a 'course of action' or 'requirement'. 75 years is a long time to retain some data and there is nothing in the act talking about the deletion of the particular data after 75 years, but it only says to retain the data digitally for 75 years, which means it gives 75 years of a full opportunity to anyone to use that data maliciously. One of the most recently recognized fundamental rights is the Right to Privacy which came into the limelight in the Puttaswamy-I case and the Puttaswamy- II case related to Aadhaar biometrics, where the Right to Privacy was given importance, and now this act ignores the Right to Privacy or breaches it. Many a thing comes under personal information like finger impressions, palm-print impressions, foot-print impressions, iris and retina scans, physical and biological samples, and many other things are protected under the Right to Privacy but all these are included under measurements in this particular act which needs to be collected on the discretion of the magistrate, moreover of any person, can be the accused or cannot be, just needed to be related to any criminal proceeding. Overall Right to Privacy is in danger.

### 3. Forensic Issue-

Measurements under the Criminal Procedure (Identification) Act, 2022 cover a lot of things, like finger impressions, palm-print impressions, foot-print impressions, iris and retina scans, physical and biological samples, and added by an individuals' signatures and handwriting among various other measurements. Some of these measurements are irrelevant in most cases such as handwriting, signatures, or palm impressions. Even the highest court of the country recognizes analysis of handwriting as not to be an exact science as handwriting can change under many different kinds of situations, circumstances, or with no specific reason as well. Due to the reason, it not being an exact science, the Supreme Court does not accept handwriting analysis as direct evidence and as only opinion evidence only. Other irrelevant measurements like palm prints or footprints are also not considered an exact science. Talking about fingerprints, a recent study shows that fingerprints can also change in some cases, so their reliability also diminishes. All the other scientific measurements which are included in it will come to benefit only when first they are being collected and then if something happens

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then the newly collected data will be compared with the old data by the forensic expert, here lies the problem, what if the expert does some mistake, who is checking the capability, knowledge or efficiency of the expert. There should be the availability of the requisite number of forensic experts as well, as according to NCRB crime rates in India are increasing with every passing year.<sup>3</sup>

### **CONCLUSION**

Despite having a good intention at its core, the Criminal Procedure (Identification) Act is still holding many issues spread out in three branches, one of them directly clashing with one of the fundamental rights. Other issues are also serious as in this geopolitical war situation; any data breach to enemy countries might prove to be dangerous to us only. But it's not like that it's not correctable, it can also be very beneficial if it amended properly, addressing all the core issues it has. Though the bill is a bit far-fetched and requires adding of guidelines for its working.

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<sup>3</sup> An Analysis of the Criminal Procedure (Identification) Bill, 2022' ('Report')