

A CRITICAL ANALYSIS OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022: BALANCING SECURITY AND PRIVACY

- Karan Kumar Dhawan¹ & Prof.(Dr.) Simranjeet Kaur Gill²

“Overall, we need bold change in our criminal justice system. A good first step forward is to start treating prisoners as Human beings, not profiting from their incarceration. Our emphasis must be on Rehabilitation not incarceration and longer prison sentences”

-SEN.BERNIESANDERS(I-VT.)

ABSTRACT

The Criminal Procedure (Identification) Act, 2022, represents a significant overhaul of India's identification laws, expanding the scope of data collection from convicted, arrested, and even certain non-convicted individuals. The Act authorizes the collection of biometric and behavioral data such as fingerprints, iris scans, and signatures, aiming to enhance criminal investigation efficiency and ensure national security. However, the Act raises critical concerns regarding privacy, data protection, and potential misuse, especially in light of the Supreme Court's recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India*. This paper critically examines the Act's provisions, highlighting its strengths in modernizing law enforcement mechanisms while evaluating its compatibility with constitutional safeguards and international standards on human rights. It concludes by suggesting a balanced approach to reconcile state security interests with the protection of individual privacy.

KEY WORDS: Criminal Procedure (Identification) Act, 2022; Privacy; Biometric Data; Right to Privacy; Data Protection; Criminal Justice; Surveillance.

¹ Research Scholar, CT University, Ludhiana, Punjab

² Principal, School of Law, CT University, Ludhiana, Punjab

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

INTRODUCTION

1.1. GENERAL

After being approved by the Parliament of India in April 2022, the Criminal Procedure (Identification) Act, 2022 ultimately went into effect. It repeals the Identification of Prisoners Act of 1920, a colonial-era statute that allowed police to measure suspects who had been convicted, detain or were awaiting trial³.

The Criminal Procedure (Identification) Bill, 2022, which generated significant controversy, is the main focus of this article. Deliberations in the Indian Parliament took many twists and turns and took all day and night. With the aid of this study, we will look at the numerous aspects of the history and growth of a colonial deed that attempted to keep up with "Badalta Bharat."

The Criminal Procedure (Identification) Act, 2022 was passed by the Parliament in April 2022 which replaces the Identification of Prisoner's Act, 1920 that allowed police officers to take measurements of the people who were convicted, arrested or were facing trials in criminal cases.

The Criminal Procedure (Identification) Act, 2022 gives legal sanction to the police officers to take biological and physical samples of the people accused of the crimes and those of convicts as well. Section 53 and 53A of the CrPc (Code of Criminal Procedure) 1973 allows the police to collect data.

1. BACKGROUND

The old code, the Code of Criminal Procedure, 1898, did not have the provision of medical examination of the accused. The Law Commission, in its 41st Report (1969), considered the necessity of physical examination of the arrested person for an effective investigation, without offending Article 20(3) of the Constitution. The recommendation was included in the CrPC (of 1973), as Section 53.

Later, an amendment was made in the CrPC (with effect from June 23, 2006) and an

³GoyamPitalia, Vulnerable to misuse by police, the new Criminal Identification Act can create surveillance state, THE WIRE (Aug. 30, 2022) <https://thewire.in/rights/criminal-identification-act-surveillance>

Explanation of 'examination' was added to Section 53 to provide legal backing to materials/biological samples on which the medical examination could be conducted. Similarly, Section 311A was added to facilitate providing a specimen signature or handwriting during investigation.

2. Major Provisions

It authorises the police and prison authorities to take 'measurements' of convicts and others for the purpose of identification and investigation in criminal matters and to preserve records. The Act does not mandate the compulsory recording of all measurements for all types of offences. The measurements shall be taken 'if so required' and as may be prescribed by governments⁴.

Repeals the old act

- The Act seeks to repeal the Identification of Prisoners Act (IPA) of 1920, whose scope was limited to recording measurements which include finger impressions and footprint impressions of certain convicts and non-convict persons⁵.

- **Broadens the scope of the 'measurements'**

The scope of the 'measurements' in the IPA was limited

- The Act now includes physical measurements such as finger impressions, palm prints, footprint impressions, photographs, iris and retina scans; biological samples and their analysis; and behavioural attributes including signatures, handwriting; or any other examination referred to in Sections 53 or 53A of the Code of Criminal Procedure (CrPC), 1973.
- The CrPC provides for 'examination' (of the accused by a medical practitioner) which includes examination of blood, semen, swabs (in the case of sexual offences), sputum and sweat, hair samples and fingernail clippings using modern and scientific techniques including DNA profiling and other necessary tests which could provide evidence as to the commission of an offence.

Punishment:

- It also does away with the condition of an offence being punishable by at least one year or more of imprisonment for the "measurements" to be taken.
- It only grants an exemption in the form of mandatory consent for "biological samples",

⁴THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022, NO. 11, Acts Of Parliament, 2022 (India)

⁵An analysis of the Criminal Procedure (Identification) Act 2022, National Law University, Delhi Sep. 2022

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

except in cases where the accused is arrested for sexual abuse of women and children or for an offence carrying a minimum punishment of seven years.

- **Powers of Magistrate:** Under the act , a Magistrate may direct a person to give details for the purpose of an investigation or proceeding under the CrPC.
 - Depending on certain factors (such as the area concerned), the Magistrate may be a Metropolitan Magistrate, a Judicial Magistrate of the first class, or an Executive Magistrate.
- **Records of juveniles**
 - The Act does not explicitly bar taking measurements of juveniles
 - the provisions of the (Special Act) Juvenile Justice Act, 2015 regarding destruction of records of conviction under the Act, shall apply.
- **Role of NCRB:** It will store, process, and preserve whatever data is collected by the States and Union Territories.

Advantages of Criminal Procedure (identification) Act, 2022

1. Use of modern technology

The previous Act was limited only to fingerprints and footprint impressions, which are minimal sources for catching criminals. In the new Act, there is storage of not only mere fingerprints or footprints but even biological samples, which are stored in the DNA bank, which makes it easier to catch criminals⁶.

Expansion in the list of criminals

The new Act enables the expansion of taking measurements from people and makes the evidence more accessible. So the investigation becomes easy for the authorities.

This makes the investigation easier, and the conviction rate increases.

Drawbacks of Criminal Procedure (Identification) Act, 2022

1. Vagueness in the terminology
2. The term “biological samples” is not defined properly, so it could lead to breaches of bodily samples related to DNA.
3. Private details and medical histories could be unnecessarily stored.
4. Due to the storage of the individual’s DNA, the family history will be known, which leads to information about the individual’s family.

⁶Nicole Westman, States pass laws limiting use of DNA searches for criminal investigations , The Verge, <https://www.theverge.com/2021/6/1/22462859/dna-genetic-genealogy-criminal-laws-maryland-montana>

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Degradation of the biological samples

Biological samples are prone to contamination and degradation. The Act doesn't clearly mention the contamination. In India, the samples are stored by the police, and they lack infrastructure for the storage of samples.

Excessive collection and storage of measurements

Due to excessive storage and collection of the data, which leads to the creation of extensive databases. It may increase the chances of identifying criminals. Still, due to a lack of people in forensic and other criminal departments, it leads to more excessive work rather than solving the issue.

Cost compliances

Not only for the creation of the DNA databank, but also for the collection process, which also requires a lot of funds. The process of digitization needs a lot of time and funds, which are limited in comparison to the budgets for similar databases in other jurisdictions.

2. Issues with the NCRB's role

It is well known that NCRB outsources the day-to-day management to private contractors, which affects the reliability of the data and samples given. It could be easily available to others, which intrudes on their right to privacy.

3. Disposal or destruction of measurements

The process of destroying measurements is not mentioned. This may lead to confusion about when and how the measurements are to be disposed of, and doubts may arise about whether the measurements are disposed of or not.

Conflicts with Constitutional Law**Issue with Article 14 (Right to Equality)**

Due to excessive power delegation to police, prison authorities, or magistrates, they may compel more people to provide their measurements, and even rejection of giving the measurements is also a crime. Such excessive and uncontrolled powers may lead to discriminatory use of powers, which intrudes on the right to equality as enshrined in the Constitution of India.

Issue with Article 21 (Right to Privacy)

The Act's coverage of the collection of measurements is overboard. So, even the people who

got arrested are compelled to give measurements, which intrude on their right to privacy.

It not only intrudes on the right to privacy of the convicted persons but also of every citizen of India, as the biological samples being collected make it easier to know the family genealogical conditions.

Issue with Article 20(3) (Right Against Self Incrimination)

The word biological samples is not defined properly. This leads to the forced collection of biological samples, which is in conflict with Article 20(3) of the Constitution.

Objectives

- The purpose is to help the enforcement agencies in the prevention and the detection of crime.
- It is part of the Government's efforts to upgrade crime-solving technology in line with global standards.
- It will help in maintaining law and order, which is a legitimate state interest.

Apprehensions and Allegations

- It gives too much power to the executive, with very little accountability, raising the temptation for abuse of this law's provisions.
- It violates fundamental rights of citizens including the right to privacy — the Constitution states that Parliament can bring no law that violates the fundamental rights of citizens.
 - The proposed law will be debated against Article 20(3) of the Constitution, which is a fundamental right that guarantees the right against self-incrimination.
 - it states that "no person accused of any offence shall be compelled to be a witness against himself".

3.1. COMPARISON WITH THE IDENTIFICATION OF PRISONER'S ACT, 1920

The new Act, that is, The Criminal Procedure (Identification) Act, 2022 broadens the scope of measurements taken to identify a criminal. Under the colonial law- Identification of Prisoner's Act, the measurements which were allowed were merely finger and foot impressions and photographs. However, as we noted earlier, the measureable quantities of an individual now include palm-print impressions, iris and retina scan, behavioural attributes like signatures or handwritings and even physical and biological samples which include blood, semen, hair etc.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

According to The Identification of Prisoner's Act, 1920, measurements were to be taken of only those convicts or arrested people who committed crimes where the punishment was rigorous imprisonment of one year or more, but the new act changes that and now people who are convicted or arrested for any offence shall give their measurements.

There is one exception to note that biological samples are to be collected only when crimes against women or children are committed or when the offence has a punishment of minimum 7 years of imprisonment. The new Act also allows collection of data from people who are detained under any preventive detention law.

Earlier, only the investigating officers, officers in-charge of a police station or an officer whose rank is of sub-inspector or above were allowed to take measurements and collect data of the convicts or arrested people but under the new law, the Head Warder of a prison is also allowed to collect the data and measurements in addition to previously mentioned authorities. According to "The Identification of Prisoner's Act", a Magistrate was also given clearance for direct collection of data, however⁷.

The Criminal Procedure (Identification) Act, 2022 allows a metropolitan or judicial magistrate of first class is allowed for the same. In case, the person convicted or arrested or detained is required to maintain good behaviour or peace, an Executive Magistrate may also collect the data and measurements.

Under "The Identification of Prisoner's Act, 1920", when any person was acquitted or discharged or was released without any trial, all the measurements which were collected or recorded were to be destroyed or handed over to the person acquitted unless the court or the District Magistrate or the Sub-Divisional Officer for reasons which should be recorded in writing (also in the case where a person is released without trial).

3.2. RESEARCH OBJECTIVE

- To evaluate constitutional validity of the act and how it effects the right to privacy under Article 21

⁷European Court of Human Rights. 2020. *HUDOC: Case of Gaughran v. The United Kingdom*. 13 February 2020, retrieved 5 September 2022

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

- Violations of the Protections Against Arbitrariness, Excessive Delegation and Unguided Discretion Under Article 14
- Violation of the Right Against Self-Incrimination Under Article 20(3)
- To identify lacuna of storing database and doing an analysis on rules and regulation for storing database.
- To study scientific validity of the collected database and its legal implecation
- To make a comparison between Present Act with DNA Technology (Use and Application) Regulation Bill, 2019

3.3. RESEARCH QUESTION

- What is the constitutional validity of the act and how it effects the right to privacy under Article 21
- What is scientific validity of the collected database and its legal implementation
- What are the rules and regulation to store a database and what are lacuna of storing database
- What Are the Technological Advancements and Challenges in DNA Profiling That Have Emerged Since the Enactment of the Criminal Identification Act?
- How Does Public Perception and Understanding of DNA Profiling Influence the Acceptance and Implementation of Policies Under the Criminal Identification Act?

CONCLUSION & SUGGESTIONS:

The psychological effects of surveillance and data hoarding are very real and growing in the digital age. As people make their way through more connected environments, the unseen forces of surveillance have a subtle but profound impact on their decisions, agency, and psychological health. Concepts such as the Panopticon, Privacy Paradox indicate how continuous monitoring undermines freedom, promotes fear, and encourages social conformity. Furthermore, algorithmic personalization and predictive profiling intensify these effects, frequently causing users to question their autonomy and genuineness. But current legal conventions that aim to govern the use of the data are filled with pilferage and overlook the subtle psychological harms of surveillance.

To counter these impacts, enhanced adoptions of user-centric privacy by design principles, mental health-aware policies, as well as algorithmic transparency are required. The government also needs to ensure digital literacy, implement more robust consent models, and

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

develop psychological impact assessments of digital platforms. Privacy education should be part of the curriculum in schools. Tech companies need to act with ethical data practices and offer user control over their data, in the form of honest opt-outs. Lastly, interdisciplinary cooperation among lawyers, psychologists, technologists, and policymakers is required to ensure privacy and mental health in a data-driven society.

BIBLIOGRAPHY

- Goyam Pitalia, Vulnerable to misuse by police, the new Criminal Identification Act can create surveillance state, THE WIRE (Aug. 30, 2022) <https://thewire.in/rights/criminal-identification-act-surveillance>
- THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022, NO. 11, Acts Of Parliament, 2022 (India)
- An analysis of the Criminal Procedure (Identification) Act 2022, National Law University, Delhi Sep. 2022, <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/634d22c3b82adb4257926c79/1665999595973/P39A+Brief+-+Criminal+Procedure+%28Identification%29+Act%2C+2022+%281%29.pdf>
- An analysis of the Criminal Procedure (Identification) Act 2022, National Law University, Delhi, Sep. 2022, <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/634d22c3b82adb4257926c79/1665999595973/P39A+Brief+-+Criminal+Procedure+%28Identification%29+Act%2C+2022+%281%29.pdf>
- Nicole Westman, States pass laws limiting use of DNA searches for criminal investigations, The Verge, <https://www.theverge.com/2021/6/1/22462859/dna-genetic-genealogy-criminal-laws-maryland-montana> (last visited November 13, 2023)
- <https://blog.ipleaders.in/all-you-need-to-know-about-criminal-procedure-identification-act-2022/>
- European Court of Human Rights. 2020. *HUDOC: Case of Gaughran v. The United Kingdom*. 13 February 2020, retrieved 5 September 2022 (<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%5B%22Gaughran%22%5D%2C%22documentcollectionid%22%3A%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22%3A%5B%22001-200817%22%5D%7D%7B%7D%7D>). Google Scholar