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Exploring the Intersection of Privacy and Other Fundamental Rights with the Criminal Procedure (Identification) Act 2022

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The legislation passed the criminal procedure identification act on 17th April 2022 and has been a breakthrough in criminal law. There has been a great attempt to bring criminal investigation and technology together and create a strong network of criminal investigation. The act seeks to amend the old Identification of Prisoners Act 1920 and also is loaded with several new provisions which aim to increase the memory and efficiency of the criminal system. However, nothing is ever flawless. In its pursuit to create an efficient framework, the act turns a blind eye to constitutional fundamental rights and some major court judgments by both the supreme and the high courts. The Act is violative of several fundamental rights and major judgments of the apex court and is accused of being draconian in the light of its unchecked autonomy and disregard for constitutional principles. The archaic Indian Prisoners Act 1920 is repealed by the new Criminal Procedure (Identification) Act, 2022. The bill seeks to expand the capability of the police and forensic teams while disguising its true objectives as updating identification procedures and raising conviction rates. The article would try to look into the major back draws and violations of the act.

Keywords: *criminal, privacy, self-incrimination.*

INTRODUCTION

'Every saint has a past and every sinner has a future',¹ this observation was made by Justice Krishna Iyer in the case of *Mohd. Giasuddin v State of Andhra Pradesh*². This statement reflects the reformatory theory of punishment. However, there remains a big ambiguity in the future of the act and the rights connected to it. The Act is violative of several fundamental rights and major judgments of the apex court and is accused of being draconian in the light of its unchecked autonomy and disregard for constitutional principles. The archaic Indian Prisoners Act 1920 is repealed by the new Criminal Procedure (Identification) Act, 2022. The bill seeks to expand the capability of the police and forensic teams while disguising its true objectives as updating identification procedures and raising conviction rates. The law expands the range of who can take these measurements as well as the information that can be collected. However, the new law has drawn heavy criticism because it is said to violate Articles 14³, 20⁴, and 21⁵ of the Indian Constitution by impinging on individual rights. Authorities appear to have been granted extensive powers, and these powers not only violate numerous important court rulings but also fundamental rights. This research article will try to cover the major violations of rights and official authorities by the act and evaluate the new act's provision in terms of the existing socio-legal framework.

HISTORY AND INTENT OF THE ACT

The archaic Indian Prisoners Act 1920 is repealed by the new Criminal Procedure (Identification) Act, 2022. The 87th Report of the Law Commission of India evaluated this act for the first time in 1980 and offered many recommendations for revisions. The context for this move was the *State of UP v Ram Babu Misra*⁶ case, in which the Supreme Court emphasized the necessity of amending this statute. The first set of recommendations explained the need to change the Act to include measures for palm impressions, a specimen of signature or writing, and a specimen of

¹ *Mohd. Giasuddin v State of Andhra Pradesh* (1978) SCR (1) 153

² *Ibid*

³ Constitution of India 1950, art 14

⁴ Constitution of India 1950, art 20

⁵ Constitution of India 1950, art 21

⁶ *State of UP v Ram Babu Misra* (1980) AIR 791

voice. The second set of recommendations discussed the requirement to allow actions to be conducted for processes other than those covered by the Code of Criminal Procedure. Since the old laws related to this field were outdated the intent was to make the investigation more efficient. It offers legal authorization for obtaining accurate body measurements of those who are obligated to supply them, which would speed up and improve the efficiency of criminal investigations while also raising the percentage of guilty verdicts. For the investigating authorities to acquire enough legally acceptable evidence and prove the accused person's guilt, it aims to increase the ambit of individuals whose measurements may be obtained. Thus, the act intends to aid the investigation agencies. It also uses flawless modern technologies for a better investigation process.

BRIEF PROVISIONS OF THE ACT

The Act of 2022⁷ authorizes police personnel the legal authority to collect biological and bodily samples from both suspects and convicted criminals. The police may gather information under Sections 53⁸ and 53A⁹. The information that can be gathered includes photographs and impressions of fingers, palms, feet, retinal and iris scans, biological and physical samples, and behavioral qualities. In addition, there must be a record of the measurements, which must be kept digitally for 75 years after the measurements were taken. The National Crime Records Bureau (NCRB) is responsible for gathering measurement records from state governments, the union territory administration, and other law enforcement agencies in the interest of detaining, investigating, detecting, and prosecuting an offense under any law for the time being. At the federal level, NCRB is also obligated to retain, protect, and delete measurement records. Processing the records of relevant crimes and criminal histories and sharing and disseminating the pertinent records are additional tasks.

⁷ Criminal Procedure (Identification) Act 2022

⁸ Code of Criminal Procedure 1973, s 53

⁹ Code of Criminal Procedure 1973, s 53A

MAJOR VIOLATIONS OF THE ACT

The Criminal Procedure (Identification) Bill 2022 was put in front of the Lok Sabha on March 28, 2022. The Bill is an attempt to replace the worn-out Identification of Prisoners Act 1920.¹⁰ The following areas are expanded by the Bill:

- The types of data that may be collected;
- The individuals from whom such data may be acquired;
- The authorities that may approve such collection.

Additionally, it allows for the data to be kept in a central database. The 1920 Act and 2022 Act both define obstruction of a public official from performing his duties as resistance or reluctance to provide data.¹¹ The Apex Court has held, 'Rules cannot alter the scope, provisions, or principles of the parent Act.'¹² The Act stipulates that a police officer or prison officer will take the measures. According to the Rules, measurements may also be taken by someone qualified to do so, a licensed medical professional, or another person with this authority. The section of officers who can collect measures and access the database is also restricted by the guidelines. The NCRB or any other institution is prohibited by the Act from imposing these limitations. Additionally, it does not give the federal or state governments the authority to impose such limitations. The Rules may be going outside the bounds of the Act by including these new groups of people that are not mentioned in the Act.

WHETHER THE ACT VIOLATES ARTICLE 14

According to Article 14, no one should be denied equality before the law or equal protection under the law. The major goal is to ensure that everyone has access to the equality of opportunity and status that is mentioned in the Preamble. According to Article 14, everyone is treated equally under the law. All citizens will be treated equally in front of the law, according to this clause.

¹⁰ Criminal Procedure (Identification) Bill 2022

¹¹ 'The Criminal Procedure (Identification) Bill, 2022' (*PRS Legislative Research*, 28 January 2023)

<https://prsindia.org/billtrack/the-criminal-procedure-identification-bill-2022#_edn5> accessed 29 January 2023

¹² *Agricultural Market Committee v Shalimar Chemical Works Ltd* (1997) Supp (1) SCR 164

Everyone is equally protected by the law in this nation. Everyone will be treated equally by the law under the same situations.

The Act shows grave abuses of the Constitution's Article 14¹³ which protects the right to equality. The Supreme Court's standard of arbitrariness was not met by Bill's excessive and disproportionate provisions, which warrant negation under Article 14.¹⁴ In many cases, the Act grants the executive branch excessive power. First, it accomplishes so by delegating legislative duties to the executive while providing the executive vast rule-making discretion with little to no direction.

Moreover, the Act gives magistrates and police/prison authorities an inordinate amount of latitude in determining whom they can compel to provide measurements when they can do so, and for what purposes. Legislation may be said to be ultra vires the Constitution if it granted powers outside of what was allowed. In *Subramanian Swamy v Union of India*¹⁵ it was also noted that the delegation of authority to make administrative decisions would violate Article 14¹⁶ of the Constitution in addition to entrusting too many people with too many powers, if 'such conferment is without any guidance, control or checks.'¹⁷ Administrative actions necessitate that the authorities take no action without providing sufficient justification. It is a fundamental principle of natural justice. Nonetheless, under the terms of this Act, a Magistrate may order the gathering of personal information from a person who has not yet been arrested to support an ongoing investigation. It's up to the Magistrate's discretion whether or not to do so. This clause directly violates Article 14¹⁸ whose aim is to protect the citizens from unchecked and unjust state action.¹⁹

¹³ Constitution of India 1950, art 14

¹⁴ *Ibid*

¹⁵ *Subramanian Swamy v Union of India* (2014) 8 SCC 682

¹⁶ Constitution of India 1950, art 14

¹⁷ *Subramanian Swamy* (n 15)

¹⁸ Constitution of India 1950, art 14

¹⁹ Shaoni Das, 'The Criminal Procedure (Identification) Act, 2022 Violates Various Constitutional Mandates – the Leaflet' (*The Leaflet*, 19 May 2022) <<https://theleaflet.in/the-criminal-procedure-identification-act-2022-violates-various-constitutional-mandates/>> accessed 28 January 2023

Regardless of whether they are the main accused or not, this irrational action undermines a person's right to a fair trial. A legislative categorization must be reasonable to pass the constitutional test of Article 14²⁰; this is a well-established norm. If a categorization satisfies both requirements, it is suitable. Initially, the categorization needs to be based on discernible differences that set one class apart from another; and second, the differentia must be related to the goal of the act logically.²¹

WHETHER THE ACT VIOLATES THE ARTICLE 20(3)

The Act permits the taking of samples under duress which may be a breach of Article 20(3)²², which guards against self-incrimination. The proposed bill suggested that the collecting of biological data by coercion may result in narcoanalysis and brain mapping. Article 20(3)²³ of the constitution has the following components:

- It is a privilege that belongs to a defendant in a criminal case.
- It is a defense against being forced to testify.
- It is a defense against such pressure leading to his testifying against himself.

Measurements include fingerprints, palm prints, footprints, photographs, iris and retina scans, physical samples of biological materials and their examination, behavioral characteristics like signatures, and any test mentioned in Sections 53²⁴ or 53A²⁵ including handwriting tests, according to Section 2 of the Act²⁶. The fact that behavioral characteristics are not an art form in forensics raises questions about how vague and broadly defined it is. Whether or not to include

²⁰ Subramanian Swamy (n 15)

²⁰ Constitution of India 1950, art 14

²¹ *Shri Ram Krishna Dalmia v Shri Justice S. R. Tendolkar & Ors* AIR (1958) SC 538

²² Constitution of India 1950, art 20(3)

²³ Sehnaz Ahmed, 'Article 20 (3) of Constitution of India and Narco Analysis' (Legal Service India) <[https://www.legalserviceindia.com/article/I375-Article-20-\(3\)-Of-Constitution-of-India-And-Narco-Analysis.html](https://www.legalserviceindia.com/article/I375-Article-20-(3)-Of-Constitution-of-India-And-Narco-Analysis.html)> accessed 23 February 2023

²⁴ Code of Criminal Procedure 1973, s 53

²⁵ Code of Criminal Procedure 1973, s 53A

²⁶ Criminal Procedure (Identification) Act 2022, s 2

measures of a testimonial character is open to dispute. When such examination results in any "testimonial compulsion" would be an admission that would be incriminating.

A broad reading of behavioral qualities would even be taken to forbid procedures like brain mapping, polygraph testing, and narco-analysis, all of which were specifically forbidden by the Supreme Court's decision in *Selvi v State of Karnataka*.²⁷ Following Sections 53 and 53A of the Code of Criminal Procedure, each person who has been arrested by the police is subject to a physical examination, including taking their fingerprints, footprints, biological samples, and behavioral traits like signatures, handwriting, and fingerprints. In addition to DNA profiling analyses, this data includes blood, semen, hair, and swab samples. A person in custody under any law will not be compelled to provide such data, except when they are being held for an offense against women or children, even while refusing to do so is against the law under this Act. According to Article 20(3)²⁸ of the Constitution, such prosecution breaches a person's right to life and liberty because it essentially amounts to coercive testimony and evidence gathering.

WHETHER THE ACT VIOLATES THE RIGHT TO PRIVACY UNDER ARTICLE 21

In *Puttaswamy-I*²⁹, a nine-judge Supreme Court panel explicitly held, "the right to privacy is a fundamental right protected by Article 21³⁰ of the Indian Constitution." The five-judge panel that decided in *Puttaswamy-II* on the constitutionality of the Aadhar framework also reiterated that informational privacy is covered by Article 21's right to privacy (including biometric and other personal data).³¹ Retaining data that contains private information constitutes an infringement of that right. A violation of one's right to privacy is only legal if it passes the four-part proportionality test outlined in *Justice K.S. Puttaswamy (Retd) v Union of India*³². *Modern Dental College & Res.Cen. & ... v State of Madhya Pradesh & Ors*³³ ruling by a five-judge bench,

²⁷ *Selvi v State of Karnataka* (2010) 7 SCC 263

²⁸ *Constitution of India* 1950, art 20(3)

²⁹ *Justice K.S. Puttaswamy (Retd) v Union of India* AIR (2017) SC 4161

³⁰ *Constitution of India* 1950, art 21

³¹ *Justice K.S. Puttaswamy (Retd)* (n 29)

³² *Ibid*

³³ *Modern Dental College & Research Centre & Ors v State of Madhya Pradesh & Ors* (2016) 7 SCC 353

which first established the proportionality test in Indian constitutional law. The test laid down is as follows:

- Any restriction on a right must have a justifiable purpose ‘legitimate goal stage’.
- It must be an appropriate method for achieving this objective ‘suitability or rationale connection stage’.
- There cannot be a more permissive but equally effective substitute ‘necessity stage’.
- The measure cannot affect the right holder disproportionately ‘balancing stage’.³⁴

1. The Act does not follow the other three components of proportionality while having a valid purpose of improving criminal investigation, detection, and prevention.

2. The Act permits requiring a sizable class of people who fall under S. 3³⁵ and 5³⁶ to disclose their measurements. The Act makes no mention of how providing measurements in a specific situation must contribute to the investigation of that situation. If it is determined to be expedient for an investigation or process under the CrPC or any other legislation, the Magistrate may, following S. 5 of the Act, force any individual to provide measurements. It does not mention the need for the measurement to particularly support a criminal investigation. Therefore, there is no connection at all between this power and the legal objective of assisting in particular investigations.

3. Except in the event of the acquittal, discharge, or release of people without any criminal history (proviso to S. 4(2))³⁷, the Act does not outline a method for applying for removal or deletion. The Act does not specify a clear mechanism for the NCRB, which is responsible for destroying records of measures, to collect information on court decisions, even for the aforementioned class of individuals for whom such a procedure has been established. Therefore, it is uncertain how such a provision will be put into practice. The Act also appears to mandate

³⁴ Aditya AK, ‘Proportionality Test for Aadhaar: The Supreme Court’s Two Approaches’ (*Bar and Bench*, 26 September 2018) <<https://www.barandbench.com/columns/proportionality-test-for-aadhaar-the-supreme-courts-two-approaches>> accessed 28 January 2023

³⁵ Criminal Procedure (Identification) Act 2022, s 3

³⁶ Criminal Procedure (Identification) Act 2022, s 5

³⁷ Criminal Procedure (Identification) Act 2022, s 4(2)

the long-term storage of measurements themselves as well as digital records of those measures. Records must be kept for 75 years, according to S. 4(2), which means that they must be kept indefinitely. However, the Act does not provide a timeframe for the destruction of evidence for persons who have been found guilty, are in detention, and have been given an S.5³⁸ compliance order (including juvenile offenders). Moreover, the Act does not include any provisions for the disposal of samples taken from anybody following the Act, including those who were held and later found not guilty. According to the Supreme Court's ruling in *K.S. Puttaswamy v Union of India*³⁹, this is a blatant violation of the right to be forgotten. The Kerala High Court acknowledged the Right to be forgotten as a component of the 'Right to privacy' in *Sridharan T v State of Kerala, Civil*. The rape victim's name and other personal information were removed from search engines in this instance as part of a writ petition filed to safeguard her right to privacy under Art. 21 of the constitution. This was done to protect the victim's identity. The Karnataka High Court acknowledged the 'Right to be Forgotten' in *V v the High Court of Karnataka*. This case aimed to harm the reputation of the petitioner's daughter by removing her name from the cause title, which was publicly available.⁴⁰

4. It should be emphasized that it also violates the human rights provisions of the United Nations Charter. Privacy is a basic human right that has expanded through time thanks to several Supreme Court decisions to cover a range of aspects, including the privacy of one's place, one's body, one's information, and one's choice.⁴¹

In *Maneka Gandhi v Union of India*⁴², by saying that the 'Right to life or live' includes both bodily existence and the right to live with dignity, the Supreme Court built upon Article 21⁴³. The person's privacy has been substantially violated by the act since it has placed his life on hold

³⁸ Criminal Procedure (Identification) Act 2022, s 5

³⁹ *Justice K.S. Puttaswamy (Retd) v Union of India* AIR (2017) SC 4161

⁴⁰ Zubair Ahmad, 'Right to be forgotten' (*Manupatra*, 23 August 2022) <<https://articles.manupatra.com/article-details/Right-to-be-forgotten>> accessed 28 January 2023

⁴¹ Sanjay Vashishtha, 'The Criminal Procedure (Identification) Bill, 2022 and the Right to Privacy' (*SCC Online*, 1 April 2022) <<https://www.sconline.com/blog/post/2022/04/01/the-criminal-procedure-identification-bill-2022-and-the-right-to-privacy/>> accessed 29 January 2023

⁴² *Maneka Gandhi v Union of India* (1978) 1 SCC 248

⁴³ Constitution of India 1950, art 21

and subjected him to ongoing government inspection. In its decision in the *State of A.P. v Challa Ramakrishna Reddy*⁴⁴, the Supreme Court declared, 'Everyone is entitled to the right to life as one of their fundamental human rights. Nobody, not even the government, has the right to disregard it since it is so essential.' An individual still has humanity even though they are imprisoned. He continues to be a human being, and as such, he is still entitled to all fundamental rights, including the right to life.

The Act imposes no restrictions on how measurements and data gathered and preserved may be used. Additionally, S. 3 and 4 permit the comprehensive collecting, stashing, processing, use, and sharing of measurements obtained from detainees (possibly even ex-detainees), people who are provided security under Section 117 of the CrPC⁴⁵, people who have been arrested for any crime, and people who have been held in custody by laws governing preventive detention.

Due to the lack of distinction between those who are providing security under Section 117 of the CrPC⁴⁶, those who have been arrested or detained, and those based on the gravity of the offense and the needs of the investigation in the case in which a person is involved, the effects of the Act are disproportionate. Both the collection of measures from them and the retention period should have been led by the differentiation and/or grading between the persons covered by the Act and the offenses they have committed or may have committed. Hence, the legislation violates numerous of the aforementioned features of Article 21⁴⁷.

CONCLUSION

While having a clear objective, the Criminal Process (Identification) Act, 2022 is vague and has a larger reach since it leaves some judgments up to the authority's discretion. Such larger ramifications run the risk of turning it into a target of administrative impunity, which would be out of proportion and hazardous for the general people. A colonial government that prioritized social control over individual well-being was the one that put the Act into effect. But the ethos

⁴⁴ *State of A P v Challa Ramakrishna Reddy* (2000) 5 SCC 712

⁴⁵ Code of Criminal Procedure 1973, s 117

⁴⁶ *Ibid*

⁴⁷ Constitution of India 1950, art 21

of personal liberty is the foundation of our Constitution. Sadly, the Bill encourages the adoption of a normative system that is more restrictive than its colonial counterpart. Several concerns raised by the Act must be addressed to protect the average person's rights.

There is unquestionably a big worry about data security and privacy. Only once a solid data protection law is in place with severe penalties for violations could such procedures that include the acquisition, storage, and disposal of crucial personal facts be introduced. To identify potential defendants engaged in a criminal case, it is necessary to have more professionals gather measurements from the crime scene, more forensic labs, and technology to analyze them. Also, denying law enforcement organizations access to the newest technologies would be extremely unfair to both the general public and crime victims. Measures must be implemented to improve the legislation's execution in addition to stricter inspection and data privacy law. These steps can be followed to make the law fit into the model of a welfare state.