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# AN CRITICAL ANALYSIS OF CRIMINAL PROCEDURE IDENTIFICATION ACT, 2022

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## ABSTRACT

*The Criminal Procedure (Identification) Act of 2022 has been approved by India's parliament after a protracted debate. The 1920 Identification of Prisoners Act, which allowed for the use of identification and investigative techniques on detainees, is being repealed through legislation. The 2022 Act's extended definition of measures now encompasses physical and biological samples, behavioural characteristics like handwriting, fingerprint imprints, palm prints, and iris and retina scans (as well as their analysis). The phrase "and their analysis" in measurement reports implies that profiles can be created from a range of data sources. Measurements must be kept in digital or electronic form for 75 years, according to the Act. The Criminal Procedure (Identification) Act of 2022 states that a person is detained under any of the country's preventive detention laws if they are arrested in connection with an offense that is punishable under any law that was in effect at the time of the arrest or if they are convicted of an offense that is punishable under any law that was in effect at the time of the offense. The person in question may not be required to consent to the collection of his biological samples under the terms of this Act if the offense was not committed in violation of a law that was in effect at the time it was committed, or if the sentence for the offense was less than seven years in prison.. The author also wants to give a brief overview of the Act and many other connected topics. The author in this article will also give a brief about certain provisions which are considered to be violets of fundamental rights*

**Keywords** –criminal identification act, measurement, prisoners data, constitution, database

I. **Introduction**–Under the guidelines of the Code of Criminal Procedure, 1973 (the "CrPC") and the former Identification of Prisoners Act, 1920 (the "1920 Act"), several kinds of biological and physical samples could be gathered. These rules strike a balance between the requirement to get necessary evidence for the inquiry and the preservation of an individual's right to privacy when allowing coercive tactics to gather non-communicative evidence. However, the 1920 Act's authorization of taking "measurements" was more limited than it is now. According to the Code of Criminal

Procedure, 1898, it was only permitted to take such materials for the purpose of an inquiry and various procedural safeguards were offered to prevent misuse of the legal system. The Act does not include a precise definition of "measurements," for example, leaving certain terminology unclear and having an impact on the Act's overall structure. The definition given in Section 2(1)(b) is broad and can be interpreted in a variety of ways. Furthermore, words like "biological samples" and "analysis" of biological samples are employed there without definition. The current law under the CrPC governing the

examination of the body for evidence [Sections 53], which expressly stipulates the samples on which such exams can be done, is significantly different from this. It is uncertain which measures qualify as "biological samples" under the current Act. Similarly, the term "analysis" is used without definition and could refer to a variety of techniques for processing biological material, even when used for investigative reasons alone. The use of the word "behavioural attributes" within the context of measurements exhibits a similar issue of ambiguity. What all issues this act comprises and how it violates fundamental rights in whole and what are the other issues.

**II. Article 14-** "Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"

A. The Act shows grave abuses of the Constitution's Article 14-protected right to equality.

1. The Act's constitutional vices include arbitrary classification, excessive delegation, and unjustified classification.

2. The Act went too far erroneously transfers legislative power to the executive in a way that violates the Constitution, gives officials undue discretionary authority, is blatantly arbitrary, and fails the reasonable categorization requirement

3. The Act allows the police and the magistrate excessive and overbroad discretion under section 5 and 3 to make administrative judgments and pass orders, respectively, in addition to delegating unguided legislative power to establish rules under Sections 4 and 8 and abdicating its legislative duties.

B. The Act mandates that measurements be taken by law enforcement and prison staff, that these measurements be collected, preserved, and shared by state-notified agencies, and that the NCRB collect, store, destroy, process, and disseminate the records of these measurements in the interest of

"prevention, detection, investigation, and prosecution" of criminal offenses.

1. The Act gives the executive branch undue power in many instances. It does so, first, by giving the executive broad rule-making authority with little guidance and, second, by giving Act functionaries an excessive amount of discretion in determining who they may compel to provide measurements, under what conditions, and for what purposes.

C. The Act provides for the storage, preservation, and sharing of these measurements on two different levels.

1. Agencies must be informed by the State and UTs to collect, store, and share measurements. According to the Act, the NCRB is responsible for gathering, preserving, storing, processing, destroying, sharing, and disseminating the records of the measurements gathered and shared by states and UTs.

2. However, the Act makes no recommendations or mentions any guiding principles as to how these powers should be used or controlled; it only authorizes these rights of collecting, preservation, storage, processing, and sharing of the personal information of those who fall within its purview.

3. Central and State Governments have been charged with providing any and all procedural protections, despite the serious consequences of the Act's broad reach for the right to privacy of persons. This entails both an excessive delegation of legislative responsibilities and a dereliction of the legislature's own duties.

**III. Article 20(3)-** "No person accused of any offence shall be compelled to be a witness against himself"

A. Measurements are described in Section 2 of the Act as "fingerprints, palm prints, foot prints, photographs, iris and retina scans, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting, or any other examination referred to in Section 53 or Section 53 A of the Code of Criminal Procedure, 1973."

**B.** It is noteworthy that the word "behavioural attributes" does not have a specific definition in forensic science, which raises questions about 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 attributes" 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. A broad reading of "behavioural attributes" would even be taken to forbid procedures like brain mapping, polygraph testing, and narcotic-analysis, all of which were specifically forbidden by the Supreme Court

**C.** 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.<sup>36</sup> As a result, the term "behavioural attributes" 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.

**IV. Right to privacy under Article 21-**  
*"Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law"*

**A.** According to Section 3, anyone can be forced to provide measurements "if required," including detainees, arrestees, and people who have been ordered to provide security for disorderly conduct. The Act makes no additional effort to specify the conditions in which police or prison authorities may require the taking of such measures. The Act does not stipulate that providing measurements in a specific situation must in any way support the inquiry into the relevant subject. Section 3 therefore has no

logical connection to the claimed objective of assisting inquiries in particular areas.

**B.** The class of people covered by Section 3 convicts of all offenses, prisoners, arrestees, and those ordered to provide security for maintaining peace and good behaviour and the higher chance of past or present crime have not been shown to have a rational connection. There is no research in India on the ratio of recidivism among ex-offenders to general community offending rates. The idea that those who have been detained or arrested are more likely than others to have committed crimes in the past has also not been proven. Similar to this, the Act still allows for the indefinite preservation of "measurements" taken under section 3 after the investigation into an arrestee is over and the arrestee is cleared, freed, or otherwise released without a trial. Again, there is no logical connection between previous arrests for a crime for which one was found not guilty and the likelihood of further offending.

**C.** The Act permits the requirement of measurements from an excessively large class of people. Regardless of the seriousness or type of the offense, it applies to anyone who has been convicted of a crime, including ex-offenders, as well as anyone who has been placed under preventive detention. It also applies to everyone who has been arrested. When determining whether an offense is of a kind that the use of measures is likely to benefit the investigation, no classification is made based on the nature of the offense. As a result, the Act's scope is too broad to accomplish the justifiable goal it set out to accomplish. Additionally, Section 5 of the Act enables the Magistrate to order the taking of measures of "any person" for the purposes of "any other law...in force," in addition to investigations or procedures under the CrPC. Section 5 does not seem to stipulate that there must be grounds for suspecting criminal activity on the part of the subject whose measures are taken.

**D.** A large database does not, by itself, result in better criminal investigation,

prosecution, or prevention. Therefore, neither of the two legitimate goals of connecting a specific suspect to a specific crime nor of identifying potential future criminals can be satisfied without the comprehensive coverage provided by the Act.

#### V. Data base issues-

A. According to the government's own calculations, the cost of building up the DNA databank would be in 15 to 20 crore rupees, which is incredibly low when compared to the budgets for such databases in other countries. Building databases that go beyond DNA would demand more money.

B. The Act makes a distinction between "measurements" and "records of measurements". Section 4(1) and (2), which deal with records, imply that a variety of measures will be gathered, digitally recorded, and kept as records in a database indefinitely for the purpose of research. According to the needs of the database itself, the measurement collection procedure will therefore be distinct from the digitization process. Both will have separate infrastructure and training needs, which will increase the database's cost. Due to the Act's lack of clarity on the entities in charge of collecting, preserving, and exchanging measures, one should also take into consideration the costs associated with developing the ability within the states and UTs to create and manage such databases. This is even before the expense of maintaining such a large database is taken into account. The knowledge and rigor with which different types of pattern matching evidence are currently collected, analyzed, and subjected to legal review in India is insufficient. As a result, gathering and retaining such vast volumes of data is a pointless operation with no discernible goal or tangible advantages.

#### VI. Conclusion –

In summary The Act authorized the collecting of measurements for the purpose of identification on those who have been convicted, who have been arrested, who are in

custody, or who are currently involved in criminal proceedings.

The range of measurements, which was previously limited to finger and foot prints and images, has now been expanded to encompass physical and biological samples, finger, palm, and footprint impressions, iris, and retina scans, as well as behavioral characteristics, which may include handwriting. As was already mentioned in this article, the Act further expanded the "ambit of persons" who are permitted to collect measures. For 75 years following the date of collection, the measurements must be kept in a database. The Act is a much-needed reformation for Indian society since it will elevate India to the top of the world for criminal identification thanks to the usage of contemporary technologies. It makes sense for a developing nation like India to introduce a law that aims for the same cause because many developed countries use modern technology for the identification of convicts or the persons accused because they offer reliable and accurate results that make the investigative process easier and quicker. Despite this, there are several issues with the Act that must be resolved in order to safeguard the rights of the average person. The Act ignores the requirement for appropriate protections and processes for the preservation of measurement records, which can be considered to contain sensitive information given that they would likely include physical and biological samples of those who are charged, convicted, or otherwise held. Earlier discussions covered further Act-related topics. The government should concentrate on introducing a Data Protection Bill that protects the sensitive information of the general public in order to address the problems with the Act. The government should make an effort to clarify any unclear terms in the Act. Additionally, there is a need to raise knowledge among the authorities working in rural and underdeveloped areas about how to handle and apply current technologies on a daily basis when taking measurements. The Criminal Procedure (Identification) Act, 2022 is a

commendable effort by the government to update the criminal laws of the nation, but it needs to be revised to ensure that it doesn't jeopardize the interests of the general public or infringe upon their fundamental rights. If the problems are fixed, the Act will undoubtedly contribute to strengthening both the effectiveness and efficiency of the investigative agencies.

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