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CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022

AUTHORED BY - ARCHANA CHARAK

CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022

The "Criminal Procedure (Identification) Act, 2022" grants law enforcement agencies the authority to take physical and biological samples from convicts and other individuals for storage and analysis in order to identify and look into criminal offences. "The Identification of Prisoners Act, 1920, which permitted the police to take pictures and record fingerprint and footprint imprints, is repealed, giving the police the legal authority to collect physical and biological samples from suspects and criminal defendants on an equal basis."

When the Statute Commission analysed this statute for its 87th Report in 1980 and provided a number of reform proposals, it became evident that this law needs to be revised. The "State of UP v. Ram Babu Misra" case, in which the Supreme Court emphasised the need to modify this statute, served as background for this action. "The term 'measurements' is defined in Section 2(b) of the said Act. Sections 53 and 53A of the Code of Criminal Procedure, 1973 list a variety of measurements as examples, including fingerprints, palm prints, foot prints, photos, iris and retina scans, physical examinations, biological samples and analyses, behavioural traits like signatures and handwriting, and any other examinations."

The police may collect information under Sections 53 or 53A of the Code of Criminal Procedure (CrPC), 1973. "Fingerprints, palm prints, footprints, photographs, iris and retina scans, physical examinations, biological samples and their analysis, behavioral qualities like signatures and handwriting, as well as any other sort of assessment, are a few examples of the data that can be gathered." The CrPC is the main piece of legislation that controls how criminal law is applied procedurally.

Any person who is found guilty, imprisoned, or detained under a preventative detention act is required to provide 'measurements' to a police officer or a prison official. Any law enforcement agency may access, share, and erase the national record of measurements with the National Crime Records Bureau (NCRB). It intends to support investigating authorities in cases and ensure the distinct identification of people who are involved in crime. The retention period for records is 75

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years.

KEY FEATURES

The "Criminal Procedure (Identification) Act, 2022," gives police officers and prison staff the authority to ask suspects who have been arrested for a crime or who have been convicted of a crime for specific identifiable information. Fingerprints, pictures, iris and retina scans, biological samples and their analysis, and behavioral characteristics might all be included in this information. "The National Crime Records Bureau (NCRB) is authorized by the Act to gather, store, process, communicate, disseminate, and, as may be required by laws, delete records of measurements from state governments, union territory (UT) administrations, or other law enforcement authorities." These specifics are outlined in the Criminal Procedure (Identification) Rules, 2022. The Ministry of Home Affairs announced these Rules on September 19, 2022.

The main components of the rules are as follows:

- **Taking measurements:** According to the Act, it may be necessary for all prisoners, those who have been arrested, and those who are being held as a result of a preventive detention order to provide their measures. According to the Rules, some individuals will not have their measures taken until after they have been charged or detained in relation to another offence. These people include individuals who are detained under preventive detention under "Section 151 of the Code of Criminal Procedure, 1973 (CrPC), or who violate prohibitory orders under Sections 144 or 145 of the Code of Criminal Procedure, 1973 (CrPC)."
- **Persons authorized to take measurements:** A prison officer or a police officer must collect measurements in accordance with the Act. According to the Rules, these measurements may be taken by any person who is authorized in this regard, including registered medical professionals, experienced measurement takers, authorized users, and people with similar qualifications. An authorized user is a police officer or a correctional official who has been granted access to the database by the NCRB.
- **Storage of measurement records**: The NCRB must publish Standard Operating Procedures (SOPs) for taking measurements in accordance with the Rules. These SOPs must contain details on (i) the specifications and format of the measurements to be taken, (ii) the specifications of the instruments to be used for these measurements, and (iii) the handling and storage procedures. The SOPs may additionally outline (i) the process for converting each

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measurement to a digital format before uploading it to the database and (ii) the method for encrypting the data.

- **Sharing of records**: In order to check whether a person's measurement record matches, an authorized user will submit the request to NCRB. Before providing the authorized user with a report, NCRB will use the record to look for matches across a secure network. The SOPs will contain guidance on how to match and process the records.
- **According to the Act, unless the Magistrate or court determines otherwise, records will be erased when people:** (i) have not previously been convicted (of an offence with imprisonment), and (ii) are released without trial, discharged, or acquitted by the court. The NCRB will properly dispose of the records. The SOPs will outline the record disposal and destruction process in accordance with the Rules. A nodal officer will be designated by the state, the federal government, or the UT administration to who requests for the deletion of measuring records will be made. After confirming that the records in question are unrelated to any other criminal matters, the nodal officer will propose their destruction to NCRB.

NEED FOR REPLACEMENT OF THE CURRENT ACT

Supreme Court's interpretation of Article 21 of the Indian Constitution .i.e. Right to privacy may be violated by a number of provisions in the Act. Additionally, a statute may not meet the requirements of Article 14 for equality of treatment and fairness. The parent Act's scope, provisions, and guiding principles cannot be changed by Rules, according to the Supreme Court.

These Rules may be modifying the Act's scope in a number of situations. These are covered below.

- **Limiting the circumstances under which measurements may be taken**

All criminal defendants, those who have been arrested, and people who have been detained in accordance with any preventative detention law may be requested to provide their measurements under the Act. The Magistrate may also request measurements from anyone to help with the investigation. According to the Rules, some individuals will not have their measures taken until after they have been charged or detained in relation to another offence. "These people include those who have been arrested for violating preventive detention orders under Section 151 of the CrPC or violating prohibitory orders under Sections 144 or 145 of the CrPC. As a result, the Rules are limiting the legal justifications for collecting personal data." By doing this, they might be

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changing the grounds listed in the Act and thereby straying outside of its purview.

- **Increasing the number of people permitted to collect measurements**

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 Rules may be going outside the bounds by including these new groups of people that are not mentioned in the Act. Additionally, neither the Act nor the Rules specify what qualifies as a measuring expert.

- **Limiting the people allowed to collect measurements**

The Act permits measures to be taken by either a police officer or a jail officer who is not below the rank of Head Warder (in charge of a police station, or at least at the rank of a Head Constable).An authorized user is allowed to collect measurements under the Act, according to the Rules. A police officer or a jail official who has been given permission by the NCRB to access the database has been defined as an authorized user under the Rules. As a result, the category of officers who may take measures and access the database is limited by the Rules. 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. Therefore, the Rules may be violating the Act's intent by prescribing such limitations.

- **A lot of delegation**

According to the Act, the NCRB is authorized to collect, maintain, process, share, distribute, and destroy measurement records as needed to comply with regulations issued by state governments, UT administrations, or other law enforcement organizations. It confers legislative power on the federal and state governments. In accordance with the Rules, NCRB is required to specify through SOPs the policies and procedures for (i) collecting measurements, (ii) keeping and preserving these records, (iii) processing and matching the records, and (iv) destroying and discarding the records. This raises two questions.

- **Additional delegating of rulemaking authority to NCRB**

The Rules may be further transferring the government's ability to make rules to the NCRB by allowing it to establish these rules. “The Supreme Court stated in 2014 that Subordinate legislation, which is generally in the realm of Rules and Regulations dealing with the procedure

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on implementation of plenary legislation, is generally a task entrusted to a specified authority." This was in reference to a case involving excessive delegation. The Legislature has decided that it is appropriate to delegate the aforementioned responsibility to an agency since it does not need to spend its time thinking out the specifics of how the law will be implemented. Such a responsibility cannot be delegated by that agency to its staff members because doing so would be a betrayal of the trust placed in the delegate.[1]

This also begs the question of whether these SOPs would be presented to the State Legislatures or the Parliament. According to the Act, the respective governments must present the Rules to the state or national legislatures. For instance, the Rules we are talking about ought to be tabled. It is unclear, though, if the NCRB's SOPs will come under such scrutiny.

- **Conflict in NCRB's own guidelines prescription**

The NCRB will be setting standards for the collection, storage, and processing of measurements for it by publishing these SOPs. The separation of the functions between the entity that provides guidelines and the entity that must abide by them may be broken down in this situation.

- **On request, records will be destroyed**

As required by the Act, NCRB will maintain, keep, and eventually destroy the documents. If a person (i) has never been convicted before, (ii) is found not guilty after all appeals, or (iii) is released without a trial, the records will be erased. The SOPs will outline the record disposal and destruction process in accordance with the Rules. A request must be made to a nodal officer in order to destroy any records (appointed by the state or central government or UT administration). After confirming that the records in question are unrelated to any other criminal matters, the nodal officer will propose their destruction to NCRB. Although the Act mandates record destruction in these circumstances, the Rules place the onus on the individual to make the request.

IMPORTANCE OF THE ACT

- **Modern Techniques:** The Act allows for the use of contemporary methods for taking and documenting accurate body measurements.

  A small group of convicted individuals were the only ones whose fingerprints and

[1] 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.

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footprints may be taken under the current law.

- **Helping Investigating Agencies:** It attempts to increase the "ambit of persons" that can be measured in order to help the investigative authorities amass sufficient legally admissible proof of the accused's guilt.
- **Making Investigations More Efficient:** It offers legal authorization for taking relevant body measurements of those who are needed to submit such measurements, which will speed up and improve the efficiency of criminal investigations while also raising the percentage of guilty verdicts.

LEGAL PROBLEMS

- Privacy Violation: Despite appearing technical, the legislative proposal impairs the right to privacy of every Indian citizen, not just those who have been convicted of a crime.
- It offers provisions for obtaining samples from protesters participating in political demonstrations.
- Ambiguous Provisions: The proposed law replaces the Identification of Prisoners Act of 1920 and significantly broadens its scope and application.
- Since "biological samples" is not defined further, it could be interpreted to mean invasive bodily operations like obtaining DNA samples or drawing blood.
- These are actions that currently call for a magistrate's written approval.
- Enables coercive sample collection and may constitute a violation of Article 20(3), which safeguards the right to self-incrimination.
- According to the Bill, brain mapping and narco-analysis could result from using force to get biological data.
- The records will be kept for 75 years, but handling the data involves thinking about how the information will be shared, discarded, and maintained.
- Mass surveillance may also occur from collection, as the database created by this law may be integrated with those of "the Crime and Criminal Tracking Network and Systems" and other databases.
- "The Crime and Criminal Tracking Network & Systems (CCTNS)" is a plan scheme that was developed in response to the Common Integrated Police Application's experience (CIPA).

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- Even though it says that someone who is detained but isn't accused of a crime against a woman or a child can refuse to have a biological sample collected, not all people who are being held in jail are aware of this alternative.
- The police may find it simple to reject such a refusal and then subsequently assert that they had the detainee's permission.

WHO IS REEQUIRED TO GIVE MEASUREMENTS?

The individuals who will be required to provide the said measures are covered in Section 3 of the Act. Convicts, those required to provide security for good behavior and keeping peace, people detained under the law on preventative detention, and people who have been arrested in connection with any crime are examples of such people. This list of individuals also specifies an exception, which states that if a person is detained for any crime that is not against a woman or child or that carries a sentence of at least seven years in jail, he may not be required to produce his biological samples. A violation of Section 186 of the Indian Penal Code is any resistance to or unwillingness to permit the collection of measurements.

The Act also gives the National Crime Records Bureau permission to gather measurement records, keep, maintain, and delete them, combine them with pertinent criminal and crime data, and exchange and distribute such data with any law enforcement organization. The retention of these records in digital form is required to last 75 years. However, all records of measurements obtained must be erased in cases when a person, who has not yet been found guilty of an offence, is released without a trial, discharged, or found not guilty by the court after exhausting all available legal remedies. It should be noted that Section 5 of the Act gives a Magistrate the authority to order someone to provide measures for any inquiry or process under the Code of Criminal Procedure, 1973, or under any other legislation.

RELEVANCE OF ACT IN CONTEMPORARY INDIA

The Act provides for use of technology record appropriate body measurements of convicts, accused persons etc. In this modern age of technology it is essential for a governance to be as updated as the persons in conflict with laws and the rest of the world. Today, Artificial Intelligence is surpassing itself and evolving on an enormous speed; in such an age it becomes essential for the executive to be able to lay its hands on malefactors with speed and accuracy. The new law makes investigation more efficient and expeditious. This law also helps the investigating

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agencies to increase the ambit of persons and gather evidences which are legally admissible in the court of law. It is also to be noted that with time, the entire world is shrinking in context of access and communication. It has become far easier to escape and hide from the law and in such a scenario it becomes pertinent to modernize the investigations as well.

CONCLUSION

There is no denying that data security and privacy are significant challenges. Policies regarding the collecting, storage, and disposal of crucial personal information should only be put into place if a strong data protection law is in place with harsh penalties for infractions. Denying law enforcement organisations access to the newest technologies would be incredibly unjust to both crime victims and the broader public. Along with stricter inspection and the data privacy law, actions must be taken to enhance the law's execution. To analyse data gathered at the scene of a crime and identify prospective suspects in a criminal case, more forensic labs, specialists, and techniques are needed. Since they are significant, the worries about privacy invasion and equality should be treated seriously. The act is significant because it makes it possible to use contemporary technology to solve crimes, which is essential to providing justice to crime victims. The process for acquiring evidence should be carried out by experts who follow strict guidelines to avoid breaking any laws. When storing data for an extended period of time, strict data protection guidelines must be followed.

In accordance with several other laws, it is the responsibility of the entity maintaining the data to delete personal information when it is no longer needed, or the courts may order the entity to do so. "The Juvenile Justice (Care and Protection of Children) Act, 2015, for instance, mandates that records of a kid who has been found guilty and dealt with by the law be erased (except for heinous offences)."[2] The Juvenile Justice Board instructs the police, the court, or its own registry to erase the records in these situations. The Rules under the Act additionally state that the person in charge, the Board, or the Children's Court must destroy such records after the appeal period has passed.[3] Records of a person who has been exonerated must be deleted, according to the "Identification of Prisoners Act, 1920 (which was replaced by the 2022 Act)."[4]

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