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LOK SABHA

The Criminal Procedure (Identification) Bill, 2022

LETTER FROM THE EXECUTIVE BOARD :

Dear Member of Parliaments,
On behalf of the executive board, we wish you a very warm welcome to the DPSR MUN.

Understanding the concept of the Model UN Conference, it is a simulation of the United Nations and as we all know that Indian Parliament isn't a part of it but as the tradition goes on, we consider the committee of Lok Sabha a very important aspect as it brings Indian Politics into light. Hence, you won't be referred as delegates, you will be referred as Member of Parliaments only.

Unlike the UN committees, we will focus more on the political landscape and political intellect while keeping the ideology of the party and the portfolio allotted to you in mind. Politically sensitive topics will also be raised during the session, but we hope you will maintain the decorum of yourself as an individual and of the party you represent.

Kindly note that we are not looking for existing solutions, or statements that would be a copy paste of what the kind of leader you are representing has already stated; instead we seek an out of the box solution from you, while knowing and understanding your impending political and ideological limitations.

This Introductory guide would be as abstract as possible, and would just give you a basic perspective on what you can expect from the committee and areas within which your research should be focused at this given point of time. Given the extremely political and volatile nature of this committee, your presence of mind and politico-analytical aptitude is something which we at the executive board would be looking to test.

Kindly do not limit your research to the areas highlighted but ensure that you logically deduce and push your research to areas associated with the issues mentioned.

This committee unlike other conferences will have a major involvement and intervention by the executive board.

The purpose of this guide is to help you grasp the understanding of the agenda and this isn't a STUDY GUIDE, but a Background guide to give you the background of the agenda and not more than that. We believe that by not being dependent on this document, there will be room for growth as you will put your efforts into research that shall help you not only for this conference but also for your future.

Seeing the agenda, this guide might not be able to touch all the various implications with respect to the agenda, the soul purpose of this guide will be to provide a brief detail and help you in research.

The usage of the internet is prohibited in the committee sessions and use of any AI tools like Chat GPT and Bard is strictly restricted while researching. If any trace of AI formed speeches is found strict action will be taken by the executive board.

Wishing all of you good luck and hope we have quality debates serving the national as well as public interest.

Regards ..

Utkarsh Thanwar
(Speaker)

Following is a suggested pattern for researching (if required);

- Research on the allotted personality, understanding his/her thinking about the- Agenda.
- Comprehending the Party Policy of the allotted Personality. It includes understanding the ideology and principles adopted by the party on the agenda. It further includes studying past actions taken by the party on the agenda and other related issues –specifically analyzing their causes and consequences.
- Researching further upon the agenda using the footnotes and links given in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc.
- Understanding policies adopted by different political parties and major parties involved in the agenda. Including their position, ideology and adopted past actions.
- Characterizing the agenda into sub-topics and preparing speeches and statements on them. It is the same as preparing topics for the moderated caucuses and their content.
- Preparing a list of possible solutions and actions that can be adopted on the issue as per your party's policies.
- Assemble proof/evidence for any important piece of information/ allegation you

are going to use in committee

- Keeping your research updated using various news sources, especially news websites given in the proof/evidence section.

- Lastly, we would request all the delegates to put sincere efforts in preparation and research for the simulation and work hard to make it a fruitful learning experience for all.

A lot of members have doubts such as what they are supposed to write or how they should structure their speech. This is completely up to the member. The maximum we can do is to tell you according to our experiences about how speeches are structured
and content chosen for them accordingly. These are:
- Premise – Analysis – Example
- Problem – Solution – Benefits
- Past – Present – Future Scenario
- What – So what – Now what

There can be more structures. These are some of them which the members of the The Executive Board has seen.

Note: The best way to debate in any format is to clearly state your opinion and justify it with substantive rational sources.

PROOF/EVIDENCE IN COMMITTEE

1. Government Reports (Each ministry publishes its own reports including External Affairs Ministry)

2. Government Websites

3. Government run News channels i.e. RSTV, LSTV, DD News 4.Standing Committee Reports/ Commission Reports

4. RTI Proofs

5. Parliamentary Standing Committee reports

6. Questions and Answers of the parliament

NOTE:Under no circumstances will sources like Wikipedia (http://www.wiki- pedia org/), Amnesty International (http:// www.amnesty.org/) or newspapers like Times of India (http:// timesofindia.indiatimes.com/), etc. be accepted as PROOF/ EVIDENCE. But they can be used for better understanding of any issue or even be brought up in debate if the information given in such sources is in line with the beliefs of the Government

INTRODUCTION:

On 18-4-2022, Parliament enacted the Criminal Procedure (Identification) Act, 2022[1] (the 2022 Act) with the aim to authorise the taking and preserving of the rcords of measurements of convicts and other persons for the purposes of identifiction and investigation in criminal matters. This Act seeks to repeal the Identification of Prisoners Act[2], 1920 (the 1920 Act) which is a colonial law that at present authrises the taking of measurements and photographs of convicts and others. Through this 2022 Act, the scope of the measurements that can be taken has been redefined and broadened. At present, the 1920 Act only allows measurements of finger and footprint impressions and photographs. The 2022 Act now defines measurements as finger impressions, palm print impressions, footprint impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to under Sections 53[3] and 53-A[4] of the Code of Criminal Procedure, 1973. The 2022 Act further allows measurements to be taken of all convicts, arrested persons, as well as persons detained under any preventive detention law irrespective of any quantum of punishment awarded.Despite having a focus on technological advancements in the investigation of crime, the 2022 Act suffers from four major fundamental concerns that are strong grounds to challenge its validity

What is the Criminal Procedure (Identification) Act, 2022?

It provides Legal sanction to the police to take physical and biological samples of convicts as well as those accused of crimes.
The police as per section 53 or section 53A of the Code of Criminal Procedure (CrPC), 1973, can collect Data.
Data that can be collected: Finger-impressions, Palm-Print impressions, Footprint impressions, Photographs, Iris and Retina scan, Physical, Biological samples and their analysis, Behavioural Attributes including signatures, Handwriting or any other examination
CrPC is the primary legislation regarding the procedural aspects of criminal law.
Any person convicted, arrested or detained under any preventive detention law will be required to provide “measurements” to a police officer or a prison official.
National Crime Records Bureau (NCRB) will store, preserve, share with any law

enforcement agency and destroy the record of measurements at national level. The records can be stored up to a period of 75 years.
It aims to ensure the unique identification of those involved with crime and to help investigating agencies solve cases.

What is the Need to Replace the Previous Act?

In 1980, the 87th Report of the Law Commission of India undertook a review of this legislation and recommended several amendments.
This was done in the backdrop of the State of UP vs Ram Babu Misra case, where the Supreme Court had highlighted the need for amending this law.
The first set of recommendations laid out the need to amend the Act to expand the scope of measurements to include "palm impressions", "specimen of signature or writing" and "specimen of voice".
The second set of recommendations raised the need to allow measurements to be taken for proceedings other than those under the Code of Criminal Procedure (CrPC).
The Law Commission Report also notes that the need for an amendment is reflected by the numerous amendments made to the Act by several States.
It was felt that with advancements in forensics, there is a need to recognise more kinds of "measurements" that can be used by law enforcement agencies for investigation.

What is the Significance of the Act?

1. Modern Techniques:

The Act makes provisions for the use of modern techniques to capture and record appropriate body measurements.
The existing law allowed taking only fingerprint and footprint impressions of a limited category of convicted persons.

2. Help Investing Agencies:

It seeks to expand the 'ambit of persons' whose measurements can be taken as this will help the investigating agencies to gather sufficient legally admissible evidence and establish the crime of the accused person.

3. Making Investigation More Efficient:

It provides legal sanction for taking appropriate body measurements of persons who are required to give such measurements and will make the investigation of crime more efficient and expeditious and will also help in increasing the conviction rate.

What are the issues addressed by the Act?

The Criminal Procedure (Identification) Bill, 2022, aims to address several limitations in India's existing criminal identification system. Here's a detailed breakdown of the issues and how the bill proposes to address them, including relevant data and examples:

1. Limited Scope of Existing Legislation:

The current Identification of Prisoners Act, 1920, only allows collecting identification information (fingerprints, photographs) from individuals sentenced to imprisonment for one year or more. This significantly limits the available data for investigations. According to the National Crime Records Bureau (NCRB) 2021 report, 64.1% of all cognizable crimes in India in 2020 were categorized as "crimes against women," with a 3.1% increase from 2019. Many of these offenses fall under categories with sentences less than one year, leaving perpetrators outside the existing identification system.
For Example: In a theft case with a sentence less than one year, the current system wouldn't capture the perpetrator's fingerprints, potentially hindering future identifications if they commit similar crimes.

2. Outdated Techniques and Lack of Standardization:

The current system primarily relies on fingerprints and photographs, which can be unreliable due to potential errors, limitations in capturing details, and ease of manipulation.
A 2019 study by the National Institute of Standards and Technology (NIST) found a 0.1% error rate in fingerprint identification systems, which might seem small but can have significant consequences in criminal investigations.
For Example: In a case where a blurry photograph is the only available identification evidence, it can be difficult to accurately identify suspects or link them to past offenses.

3. Limited Information Sharing and Collaboration:

Currently, information sharing between various law enforcement agencies is limited due to inconsistencies and lack of standardization in data collection and storage. This hinders collaboration and hampers investigations.
A 2020 report by the Commonwealth Human Rights Initiative (CHRI) found that 70% of police officers surveyed across 10 states in India faced challenges in accessing information from other states due to compatibility issues and bureaucratic hurdles.
For Example: If a suspect identified in a crime scene in State A has a prior criminal

record in State B, the current system might not allow efficient information sharing, delaying investigation and potentially allowing the suspect to commit further crimes.

The proposed bill addresses these issues by:

- Expanding the scope of individuals from whom information can be collected to include convicts of all offenses, arrested persons, and individuals under preventive detention.
- Authorizing the collection of additional information like biological samples, iris scans, and potentially behavioral attributes (with concerns needing careful consideration).
- Establishing a centralized database maintained by the NCRB to facilitate information sharing and collaboration across various agencies.

It's crucial to remember that while the bill aims to improve identification capabilities, concerns regarding data privacy, security, and potential misuse require careful consideration and robust safeguards.

KEY ISSUES IN CRIMINAL LAW REFORMS

- **Modernizing the criminal justice system**

The IPC, IEA, and a large section of the CrPC are older than independent India. Given that the Bills are replacing laws from the 19th and 20th century (though amended several times), the question is whether they reflect current norms of criminal jurisprudence. We examine nine aspects.

- **Should criminal laws be reformative or punitive in character**

In 1979, the Supreme Court indicated that reformation and rehabilitation of offenders were the foremost objects of the administration of criminal justice in India, rather than solely deterrence of crime.[2] The idea of punishment being reformative and aimed at reintegrating offenders into society is central to reforming the criminal justice system.[3] The Report on the Draft National Policy on Criminal Justice (2007) recommended introducing certain reformative elements into criminal law.[4] These include: (i) decriminalising offences that can be dealt through civil process, (ii) mainstreaming settlement without trial (compounding and plea bargaining), and (iii) allowing compensation and community service for offences such as vagrancy. The Bills move the needle a bit towards reformative justice by providing for community service as an alternative to incarceration for some offences. However, they largely retain the punitive character of the criminal justice system.

There are inconsistencies in classifying offences as bailable and compoundable. For instance, theft is punishable with rigorous imprisonment between a year and five

years. The BNS adds that community service may also be imposed as punishment for theft. This is provided for cases where: (i) the value of the stolen property is less than Rs 5,000 (ii) the person is a first-time offender, and (iii) the stolen property is returned or its value is restored. However, theft remains a non-bailable offence. On the other hand, the BNS adds snatching as an offence (aggravated form of theft) punishable by imprisonment up to three years but makes it a bailable offence. In addition, many minor offences that can be tried summarily are not compoundable and will require trial and conviction (even with a fine). For example, the BNS penalises keeping an unauthorised lottery office with imprisonment up to six months. Although, the severity of the punishment suggests that it is considered a minor offence and eligible for summary trial, it is not included in the list of compoundable offences under the BNSS.

There has been a move towards reformative process in other jurisdictions. For example, the California Criminal Code was amended in 2022 to state that legislatures should intend for criminal cases to be disposed of by the "least restrictive means available". It also requires judges to "consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation".[5]

KEY FEATURES

Provisions of Criminal Procedure (Identification) Act, 2022
The Criminal Procedure (Identification) Act, 2022 has many provisions but the key provisions are stated below

- **Section 1- Short title and commencement**

The Act is called the Criminal Procedure Identification Act, 2022, and it came into force on a date specified by the Central Government through a notification in the official gazette.

- **Section 2- Definitions**

The Act provides definitions for various terms, like
- Magistrate as a judicial officer of a specific rank.
- Measurements include both physical and biological samples.
- A police officer is officer in charge who is not below the rank of head constable.
- Prison officer means below the rank of head warder.

- **Section 3- Taking of measurements**

It mentioned from which class of persons the measurements are to be taken, like

- Convicted under any offence and punishable under any law for the time being in force.
- If the person has been ordered to behave well or keep the peace by the court concerning certain legal proceedings.
- If the person has been arrested for a crime or detained under a preventive detention law.

- **Section 4- Collection, storage, preservation of measurements, and storage, sharing, dissemination, destruction, and disposal of records**

The National Crime Records Bureau is the authority for the collection, storage, and destruction of the measurements. The Act specifies that the measurements are to be preserved digitally or electronically for a period of 75 years.

Provided that where any person who has not been previously convicted of an offence punishable under any law with imprisonment for any term has had his measurements taken according to the provisions of this Act and is released without trial, discharged, or acquitted by the court after exhausting all legal remedies, all records of measurements so taken shall, unless the court or Magistrate, for reasons to be recorded in writing otherwise directs, be destroyed from records.

- Section 5- Power of the magistrate to direct a person to give measurements

The provision grants authority to the magistrate to order a person to provide measurements for an investigation or proceeding under the Code of Criminal Procedure or any law for the time being in force. The person must comply with the orders of the magistrate.

- Section 6- Resistance to allow taking of measurements

If any person bound to provide measurements resists or refuses to give measurements, then the police officer/prison officer can take measurements as prescribed in the law.

Resistance or refusal to provide measurements is considered an offence under Section 186 of the Indian Penal Code.

- Section 7- Bar of the suit

This provision states that no legal suit or proceeding can be initiated against any person for acting in good faith under this Act or any rule made under it.

- Section 8- Power to make rules

The Central and state governments have the power to make rules for carrying out the purposes of the Act.

These rules include the manner of taking, collecting, storing, and disposing of the measurements and may include any other necessary provisions.

- Section-9 Power to remove difficulties

If any difficulties arise in implementing the provisions of the Act, the Central Government may issue an order to resolve the issues. However, such orders must be published in the Official Gazette and cannot be made three years after the Act's commencement.

Differences between present and previous laws

Unlike the 1920 Act, which was limited to the collection of photographs, footprint and fingerprint impressions, the new Act seeks to expand the meaning of the term 'measurement' by redefining it to now also include iris and retina scans, behavioural attributes, including signatures, handwriting and physical as well as biological samples.

Since the term 'biological samples' is not defined in this Act, it may include narco-analysis, polygraph test, brain electrical activation profile test, etc., which are comparatively more intrusive than other measurements, including those mentioned in Section 53 and 53A of the Code of Criminal Procedure, 1973.

Therefore, it is open to interpretation whether these tests are part of 'biological samples' as intended by this Act. The Supreme Court in Selvi & Ors vs State of Karnataka & Anr opined that involuntary administration of the aforementioned intrusive tests is unconstitutional, as it is violative of the right against self-incrimination and right to privacy enshrined under Article 20(3) and Article 21, respectively.

Therefore, should the term 'biological samples' be interpreted to include narco-analysis, polygraph test, brain electrical activation profile test, etc, the Act will have the effect of overriding the Selvi judgement. Hence, it will be vulnerable to constitutional challenge.

The 1920 Act limited the scope of taking measurements only in cases where the person is convicted, out on bail, or charged with an offence punishable with rigorous imprisonment for one year or more. On the other hand, Section 3 of the new Act blurs the distinction between a convict, arrestee, detainee and undertrial by using the term "any person" whose measurements could be taken by investigating agencies in case of any offence punishable under any law enforced in the country.

Significantly, it also includes preventive detainees as a category of the person whose measurements could be taken under the provisions of this Act. Importantly,

Section 3 has a safeguard appended to it – it excuses any person convicted, arrested or detained in relation to any offence punishable under any law, except offence against a woman and a child, from mandatorily giving their measurements. It is at the discretion of the offender of such crime to provide measurements.

Comparison of key provisions of the 1920 Act and the 2022 Bill

1920 Act	Changes in the 2022 Bill
Data permitted to be collected	
• Fingerprints, foot-print impressions, photographs	• Adds: (i) biological samples, and their analysis, (ii) behavioural attributes including signatures, handwriting, and (iii) examinations under sections 53 and 53A of CrPC (includes blood, semen, hair samples, and swabs, and analyses such as DNA profiling)
Persons whose data may be collected	
• Convicted or arrested for offences punishable with rigorous imprisonment of one year or more • Persons ordered to give security for good behaviour or maintaining peace • Magistrate may order in other cases collection from any arrested person to aid criminal investigation	• Convicted or arrested for any offence. However, biological samples may be taken forcibly only from persons arrested for offences against a woman or a child, or if the offence carries a minimum of seven years imprisonment • Persons detained under any preventive detention law • On the order of Magistrate, from any person (not just an arrested person) to aid investigation
Persons who may require/ direct collection of data	
• Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above	• Officer in charge of a police station, or of rank Head Constable or above. In addition, a Head Warder of a prison
• Magistrate	• Metropolitan Magistrate or Judicial Magistrate of first class. In case of persons required to maintain good behaviour or peace, the Executive Magistrate

- The National Crime Records Bureau (NCRB) will be the central agency to

maintain the records. It will share the data with law enforcement agencies. Further, states/UTs may notify agencies to collect, preserve, and share data in their respective jurisdictions.
- The data collected will be retained in digital or electronic form for 75 years. Records will be destroyed in case of persons who are acquitted after all appeals, or released without trial. However, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.

Important changes

- The 2022 Act will permit the collection of biological samples, “behavioral attributes”, and reports of any physical examinations of the accused conducted under sections 53 and 53A of Criminal Procedure Code (“CrPC”) dealing, among others, with rape cases.
- Unlike the 1920 Act, the 2022 Act aims to authorize the collection of data from convicts, persons arrested for offences punishable under any law, or those detained under preventive detention laws. The 2022 Act limits the forced collection of biological samples to offences committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years.
- Under the 1920 Act, the power to make rules relating to criminal investigations had been entrusted with the state governments; however, the 2022 Act seeks to vest the rule making power in the central government and the state government.
- To aid in an investigation or proceeding under the CrPC, the 2022 Act seeks to empower a magistrate to direct any person to give his/her measurements and data as prescribed.
- The 2022 Act increases the number of persons who are eligible or authorized to collect data and provides discretion to prison officers, the police, and the magistrate’s officers, in this regard.
- The National Crime Records Bureau (“NCRB”), which is a central government authority, is entrusted with the task of maintaining the electronic records of measurements and other data, including the collection, storage, preservation, sharing, dissemination, destruction, and disposal of such records.
- The 2022 Act also proposes retaining such records of measurements for a period of seventy-five years.

What are the Issues with Law?

KEY ISSUES AND ANALYSIS

The Act has several provisions that may violate a person's right to privacy under Article 21 of the Constitution as laid down by the Supreme Court. It may also fail the Article 14 requirement of a law to be fair and reasonable, and for equal treatment. We have discussed these issues in our note on the Criminal Procedure (Identification) Bill, 2022.[1] In this note, we examine the various issues that arise from the Rules notified on September 19, 2022.

- **Rules going beyond the scope of the Act**

The Supreme Court has held that Rules cannot alter the scope, provisions, or principles of the parent Act.[2],[3],[4] There are several instances where these Rules may be altering the scope of the Act. We discuss these below.

1. Restricting instances where measurements may be taken

Under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. Further, the Magistrate may order collection of measurements from any person to aid investigation. The Rules specify that for certain persons measurements will not be taken unless they have been charged or arrested in connection with any other offence. These persons include those violating prohibitory orders under Sections 144 or 145 of CrPC, or arrested under preventive detention under Section 151 of CrPC. Thus, the Rules are restricting the grounds under which a person's data may be collected. In doing so, they may be altering the grounds specified in the Act, and thus going beyond the scope of the Act.

2. Expanding the list of persons who may take measurements

The Act provides that the measurements will be taken by a police officer or prison officer. The Rules expand this to also allow any person skilled in taking the measurements or a registered medical practitioner or any person authorised in this behalf to take such measurements. In adding these new categories of persons not specified in the Act, the Rules may be going beyond the scope of the Act. The Act or the Rules also do not define who is a person skilled in taking measurements.

3. Restricting the list of persons who can take measurements

The Act permits the collection of measurements by either a prison officer (not below the rank of Head Warder), or a police officer (in charge of a police station, or at least at the rank of a Head Constable). The Rules specify that an authorised user may take measurements under the Act. As per the Rules, an authorised user has been defined as a police officer or a prison officer, who has been authorised by the NCRB

to access the database. Thus, the Rules are restricting the category of officers who may take measurements and access the database. The Act does not allow the NCRB or any other entity to prescribe such restrictions. It also does not delegate the power to prescribe such restrictions to the central or state governments. Therefore, in prescribing such restrictions, the Rules may be going beyond the scope of the Act.

4. Excessive delegation

The Act empowers the NCRB to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate and destroy records of measurements as may be prescribed by rules. It delegates the power to make Rules to the central and state government. The Rules specify that NCRB, through SOPs, will specify the guidelines and procedure for: (i) taking measurements, (ii) handling and storage of these records, (iii) the processing and matching of the records, and (iv) destruction and disposal of records. This raises two questions.

5. Further delegation of rule-making power to NCRB

In allowing the NCRB to specify these guidelines, the Rules may be further delegating rule making powers of the government to the NCRB. The Supreme Court (2014) when examining a case on excessive delegation had noted that "Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate."[5]

This also raises a further question that whether these SOPs would be laid before Parliament or State Legislatures. The Act requires the respective governments to table the Rules in Parliament or State Assemblies. For example, the Rules that we are discussing need to be tabled. However, it is not clear whether the SOPs prescribed by the NCRB will see such scrutiny.

6. Conflict in NCRB prescribing own guidelines

By issuing these SOPs, the NCRB will be issuing guidelines for itself for collecting, storing and processing of measurements. This may violate the principle of separation of roles between the entity that issues guidelines and the entity that has to follow such guidelines.

- **Records to be destroyed on request**

Under the Act, NCRB will store, preserve and destroy the records, as prescribed. The records will be destroyed in case of persons who: (i) have not been previously convicted, and (ii) are acquitted after all appeals, or released without trial. As per the Rules, the SOPs will provide the procedure for destruction and disposal of records. To destroy any record, a request has to be made to a nodal officer (appointed by the state or central government or UT administration). The nodal officer will recommend the destruction of records to NCRB after verifying that such records are not linked with any other criminal cases. While the Act requires destruction of records in such cases, the Rules put the onus on the individual to request for such destruction.

In some other laws, the onus of destroying personal information is on the authority maintaining the information or on the courts to direct the authority to delete such information when it is no longer required. For example, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that records of a child who has been convicted and has been dealt with under the law should be destroyed (except for heinous offences).[6] In such cases, the Juvenile Justice Board directs the police or the court and its own registry to destroy the records. The Rules under the Act also specify that such records be destroyed (after expiry of the appeal period) by the person-in-charge, Board, or the Children's Court.[7] The Identification of Prisoners Act, 1920 (which was repealed by the 2022 Act) provided that records of a person who has been acquitted be destroyed.[8]

- **Bill may violate the Right to Privacy as well as Equality**

The Bill permits the collection of certain identifiable information about individuals for the investigation of crime. The information specified under the Bill forms part of the personal data of individuals and is thus protected under the right to privacy of individuals. The right to privacy has been recognised as a fundamental right by the Supreme Court (2017).[6] The Court laid out principles that should govern any law that restricts this right. These include a public purpose, a rational nexus of the law with such purpose, and that this is the least intrusive way to achieve the purpose. That is, the infringement of privacy must be necessary for and proportionate to that purpose. The Bill may fail this test on several parameters. It may also fail Article 14 requirements of a law to be fair and reasonable, and for equality under the law.[7]

The issue arises due to the fact that: (a) data can be collected not just from convicted persons but also from persons arrested for any offence and from any other person to aid an investigation; (b) the data collected does not need to have any relationship with evidence required for the case; (c) the data is stored in a central

database which can be accessed widely and not just in the case file; (d) the data is stored for 75 years (effectively, for life); and (e) safeguards have been diluted by lowering the level of the official authorised to collect the data. We discuss these issues below, and explore some of the consequences through a few examples.

- **Persons whose data may be collected**

The Bill expands the set of persons whose data may be collected to include persons convicted or arrested for any offence. For example, this would include someone arrested for rash and negligent driving, which carries a penalty of a maximum imprisonment of six months. It also expands the power of the Magistrate to order collection from any person (earlier only from those arrested) to aid investigation. This differs from the observation of the Law Commission (1980) that the 1920 Act is based on the principle that the less serious the offence, the more restricted should be the power to take coercive measures.3 Note that the DNA Technology (Use and Application) Regulation Bill, 2019 waives the consent requirement for collecting DNA from persons arrested for only those offences which are punishable with death or imprisonment for a term exceeding seven years.2

- **Persons who may order data to be collected**

Under the 1920 Act, a Magistrate may order data to be collected in order to aid the investigation of an offence.1 The Law Commission (1980) remarked that the 1920 Act did not require the Magistrate to give reasons for his order.3 It observed that the ambit of the law was very wide (*"any person" arrested in connection with "any investigation"*), and refusal to obey the order could carry criminal penalties. It recommended that the provision be amended to require the Magistrate to record reasons for giving the order. The Bill does not have any such safeguard. Instead, it lowers the level of the police officer who may take the measurement (from sub-inspector to head constable) and also allows the head warder of a prison to take measurements.

- **What data may be collected**

The Bill widens the ambit of data to be collected to include biometrics (finger prints, palm prints, foot prints, iris and retina scan), physical and biological samples (not defined but could include blood, semen, saliva, etc.), and behavioural attributes (signature, handwriting, and could include voice samples). It does not limit the measurements to those required for a specific investigation. For example, the Bill permits taking the handwriting specimen of a person arrested for rash and negligent driving. It also does not specifically prohibit taking DNA samples (which may contain information other than just for determining identity). Note that under Section 53 of the Code of Criminal Procedure, 1973, collection of biological samples and their analysis may be done only if *"there are reasonable grounds for believing that such*

examination will afford evidence as to the commission of an offence".[8]

- **Biological samples**

The Bill makes an exception in case of biological samples. A person may refuse to give such samples unless he is arrested for an offence: (i) against a woman or a child, or (ii) that carries a minimum punishment of seven years imprisonment. The first exception is broad. For example, it could include the case of theft against a woman. Such a provision would also violate equality of law between persons who stole an item from a man and from a woman.

- **Retaining data**

The Bill allows retaining the data for 75 years. The data would be deleted only on the final acquittal or discharge of a person arrested for an offence. The retention of data in a central database and its potential use for the investigation of offences in the future may also not meet the necessity and proportionality standards.

Examples

The examples below illustrate some of the consequences of the provisions of this Bill.

Illustration 1. Person W is found guilty of rash and negligent driving (and fined Rs 1,000). He may have his signature collected and stored in a central database for 75 years. The Bill permits this.

Illustration 2. Person X is arrested for an offence. He refuses to give his finger-prints. He is charged with preventing a public servant from performing his duty (Section 186 of the Indian Penal Code, 1860). His fingerprints are forcibly taken under both cases. He is subsequently discharged from the original case. However, as he is guilty under Section 186 of the Indian Penal Code in the second case, his fingerprints can be stored for 75 years.[9] This implies that anyone who is arrested for any offence and refuses to give measurements can have their data stored for 75 years, even if they are acquitted in the main case.

Illustration 3. Person Y is arrested. The case goes on for 20 years through several appellate levels (this is not unusual). His records will remain in the database for this period. He gets acquitted. He is arrested in another case just before the final acquittal in the first case. The records can be kept in the database until the second case is decided. This process can be continued through a third case and so on.

Illustration 4. Person Z defies Section 144 orders under the Code of Criminal Procedure, 1973 (unlawful assembly) and is arrested. His fingerprints are taken (the Bill

does not require a connection between the measurement and the evidence needed for investigation).[10] He is found guilty under Section 188 of the Indian Penal Code (disobeying an order of a public servant) and fined Rs 200.[11] His fingerprints will be in the database for 75 years.

Constitutional Law Perspectives

The Act violates the right to equality under Article 14, the right against self-incrimination under Article 20(3) and the right to privacy under Article 21.

Article14

1. Excessive Delegation of Legislative Powers:

The Act falls foul of Article 14 as it excessively delegates legislative powers by giving the Central and State Governments wideranging rule-making powers, without providing adequate guidance for the exercise of the same.

2. Grant of Excessive Discretion:

The Act grants excessive and overbroad discretion to police and prison officers as well as Magistrates to compel persons to allow the taking of their measurements. Such excessive and uncontrolled discretion is arbitrary, and also raises the concern of discriminatory exercise of these powers.

3. Manifest Arbitrariness:

Several provisions of the Act do not disclose an adequate determining principle. First, the overbreadth of the definition of 'measurements' raises concerns about whether the indiscriminate collection of all types of 'measurements' can 6 actually achieve the purpose of more efficient investigation and crime prevention. Second, the failure to disclose a basis for the taking of measurements under the Act contributes to its arbitrariness. Third, the absence of a mechanism for destruction of measurements and records of persons who have not been convicted or arrested or detained or ordered to furnish security for good behaviour or maintaining peace is arbitrary. Finally, S. 6, which makes it an offence to refuse or resist the taking of measurements, without the Act providing clear guidance on who is obliged under the law to allow their measurements to be taken, is arbitrary.

4. Unreasonable Classification:

The proviso to S. 3 classifies arrested persons on the basis of the gender/age of the victims of their suspected offence, and on the basis of the severity of punishment provided for the suspected offence. Only those arrested for offences punishable by 7 years or more, or those arrested for offences against a woman or a child, may be compelled to give their biological samples; whereas, all arrested persons may be

compelled to give measurements other than biological samples. This classification bears no rational nexus to the aim of making investigations more efficient, whether in a given case or more generally, in future cases. In addition, it is important to note that S. 4 of the Act also mentions crime prevention as one of its purposes, “in the interest” of which the NCRB shall collect, store, process, preserve, share and disseminate the records of measurements. While this report deals only with the constitutional and policy issues raised by the scheme of the Act, readers may want to note that in its implementation, the Act also raises concerns regarding existing biases in data leading to discriminatory police practices and further stigmatisation of vulnerable communities.

Article20(3)

S.2(1)(b) of the Act defines measurements to include “...behavioural attributes including signatures, handwriting…”. The term ‘behavioural attributes’ has not been further defined in the Act, and is also not a term of art in forensic science. This leads to concerns of its possible interpretation in a way that might include measurements of a testimonial nature, allowing them to be compulsorily procured, in contravention of the ruling in Selvi v. State of Karnataka.

Article21

The Act amounts to an infringement of the informational privacy of persons it covers; and, to be constitutional, it must satisfy the fourfold requirement of the doctrine of proportionality laid down in Justice KS Puttaswamy v Union of India (I). While the Act has the legitimate aim of improving investigation, detection and prevention of crimes, it fails to satisfy the other three prongs of proportionality.

1. Suitability: There is no demonstrated rational nexus between the increased likelihood of future or past offending and the class of persons included in S. 3 (convicts of all offences, detainees, arrestees, those ordered to give security for maintaining peace and good behaviour). Further, S. 3 and 5 do not require that the measurements be taken from persons in circumstances which would show that such taking will aid in a specific investigative matter. 7 Thus, given the lack of rational nexus between the provisions of the Act and the legitimate aim espoused by it, the provisions of the Act are not suitable for its legitimate aims.

2. Necessity: The Act’s coverage of persons who may be compelled to give measurements is overbroad, as it covers persons without regard to the nature and severity of the offence and without regard to whether they are even persons of interest in an investigation. The Act provides no timeframe for deletion

of records of measurements for convicted persons, detainees, as well as those compelled under S. 5 (including juvenile offenders). Further, the Act does not provide at all for destruction of samples taken from any persons under the Act, including for those who were arrested and subsequently acquitted. The Act contains no procedural safeguards to minimise the infringement on the right to privacy, including specifying the purposes for which data may be used or shared, or the circumstances under which the Magistrate may decline the deletion of a person's data. Together, these factors make the extent of infringement on privacy caused by the Act unnecessary for the purposes of achieving the State's legitimate aim.

3. Balancing: The Act provides for no purpose limitation, i.e., no indication of the purposes for which measurements and the records collected and stored can be used. Additionally, S. 3 and 4 allow for blanket collection, storage, processing, use and sharing of measurements taken from convicts (possibly even ex-convicts), persons who have furnished security under Section 117 of the CrPC, been arrested for any offence, or detained under preventive detention laws. No gradation is made on the basis of severity of offence, its nature, or whether the determination of guilt has taken place.

PREVIOUS FRAMEWORK FOR COLLECTION OF FORENSIC EVIDENCE

Various types of biological and physical samples under the scheme of Code of Criminal Procedure, 1973 ('CrPC') and the erstwhile Identification of Prisoners Act, 1920 (the '1920 Act') could be collected. These laws balance two considerations while permitting coercive measures to collect non-communicative evidence, namely, the protection of individual's right to privacy and the need for obtaining necessary evidence for the investigation. The 1920 Act authorised taking of "measurements" but had a narrower scope than the present Act. It was restricted to taking such materials for the purpose of investigation under the Code of Criminal Procedure, 1898 and provided certain procedural safeguards to protect against abuse of process.3

The DNA Technology (Use and Application) Regulation Bill, 2019 (the 'DNA Bill')4 was introduced in the Lok Sabha in February 2019 and was referred to the Parliamentary Standing Committee on Science and Technology by the Rajya Sabha in October 2019. Pursuant to this, the report of the Parliamentary Standing Committee was tabled before the Parliament in February 2021.5 The DNA Bill raises several constitutional and procedural concerns and several changes have been recommended by the Standing Committee. While this Bill is yet to be enacted, it is relevant for this discussion as it operates in a similar sphere as and should be considered to assess the provisions of the Criminal Procedure (Identification) Act, 2022.

What materials could be collected under the previous legal framework?

1. Code of Criminal Procedure, 1973

Sections 53, 53A, and 54 of CrPC authorize the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings, by using modern and scientific techniques including DNA profiling and other tests that the registered medical practitioner thinks are necessary in a particular case. Courts have interpreted these provisions broadly. Section 311A additionally permits the collection of specimen signatures and handwriting samples.

2. Identification of Prisoners Act, 1920

The 1920 Act interpreted 'measurements' narrowly, understanding it to include finger impressions and foot-print impressions. It also allowed the taking of photographs for the categories of persons covered under the 1920 Act.

3. The DNA Technology (Use and Application) Regulation Bill, 2019 T

he source and manner of collection of samples for DNA testing has been specified by the DNA Bill. Sources include bodily substances, scene of crime, clothing or other objects. "Intimate bodily substance" including samples of blood, semen, tissue, fluid, urine or pubic hair or swab from a person's orifice or skin or tissue may be taken from or of a person, living or dead. Another form of evidence is the "non-intimate bodily substances", which includes handprint, fingerprint, footprint, sample of hair other than pubic hair, sample of nail or under a nail, swab from a person's mouth, saliva or skin impression.

CONCLUSION:

India's parliament has passed the Criminal Procedure (Identification) Act of 2022 following a lengthy debate. Legislation is being introduced to rescind the 1920 Identification of Prisoners Act, which permitted the use of identification and investigative methods on detainees. The 2022 Act's expanded definition of measurements includes iris and retina scans, behavioural traits like handwriting, fingerprint imprints and palm impressions (and their analysis), and physical and biological samples. When reporting measurements, the phrase "and their analysis" implies that profiles can be generated from a variety of sources of information. The Act stipulates that measurements are to be preserved in digital or electronic form for 75 years. This article intends to assess the Act's potential misuse and possible violation of fundamental rights such as the right to equality and privacy of those covered by the Act.