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# Drawbacks of the Criminal Procedure (Identification) Act, 2022

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## ABSTRACT

*This research paper discusses how “The Criminal Procedure (Identification) Act 2022” is in consonance with the crime control model more than the due process model. It will also cover how the crime control model is not the most ideal of all and how the reliance on this model should be done hand in hand with the due process model for the suppression of crimes. According to Packer, “if the Crime Control Model looks like an assembly line, the Due Process Model looks like an obstacle course.” Whereas one model reflects a lot of discretion given to police officers in order to discharge justice by finding criminals, the other model also aims to find criminals but through various checks in the process that are referred to as obstacles in the course. They represent two opposing values for the administration of criminal justice in the country. For the criminal system to function properly, both processes must be in sync with one another, and only one of them will cause problems. The given new act employs only the crime control model, with no regard for the due process model, making it highly arbitrary in nature. According to the above analysis, the due process model is preferred in India over the crime control model because it provides a more formal structure and the police do not have any discretionary power, which could lead to harassment of the accused. As a result, in order for the new act to be effective without jeopardising any individual's rights, it would need to incorporate elements of the due process model as well.*

**Keywords:** *Criminal Procedure (Identification) Act, Crime Control Model, Due Process Model.*

## I. INTRODUCTION

The Criminal Procedure Code “CrPC” 1978 governs how substantive criminal law is administered in our country. It has been amended several times to adhere to the changing norms of society. The recent Criminal Procedure (Identification) Act 2022 has replaced the Identification of Prisoners Act 1920 by receiving the president’s assent on 18<sup>th</sup> April 2022. This need for amending the act was highlighted by the Supreme Court in the case of State of UP V Ram Babu Misra<sup>2</sup>. As a result, the 87th report of India's Law Commission recommended several

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<sup>2</sup> State of UP V Ram Babu Misra, 1980 AIR 791.

changes. The chairman of the report, Justice P. V. Dixit, stated that science has advanced significantly since the original act was passed several years ago. This necessitates a revision of the act to reflect the current trend in criminal investigation. It recommended broadening the scope of measurements and including acts other than the CrPC as the basis for measurements. The new Act's broadening scope is consistent with the crime control model, which is based on increasing efficiency in suppressing crimes even at the expense of accused persons' rights. It authorizes the abuse of discretionary powers. This abuse of powers should however be subjected to controls and safeguards that prevent it from operating at maximal tyranny.<sup>3</sup> This research paper discusses how "The Criminal Procedure (Identification) Act 2022" is in consonance with the crime control model more than the due process model. It will also uncover how the crime control model is not the most ideal of all and how the reliance on this model should be done hand in hand with the due process model for the suppression of crimes.

## **II. THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT AND CRIME CONTROL MODEL**

In the administration of justice, India employs a hybrid of crime control and due process model. The Criminal Procedure Identification Act 2022, on the other hand, appears to be heavily influenced by the crime control model. It is clear from the amount of authority granted to police officers under the act for taking measurements of any person. Where an individual is required to provide for their measurements, the authorities are also permitted to use any means to collect the measurements if the individual resists or refuses to provide them, demonstrating their arbitrary authority. This is in line with what the model suggests, informal authority and evidence gathering in the early stages, even if self-incriminatory, is irrelevant as long as the crime is suppressed. This is also demonstrated by the inclusion of penal consequences if measurements are not provided. Furthermore, the model's presumption of guilt is reflected in how measurements can be taken even before the police dig deeper into the investigation to see if their suspicions are correct or not. The preservation of the samples collected after the conviction for a period of seventy-five years reflects how, like the model, criminals are instilled with a fear of being caught because their measurements exist in record even after their punishment is completed. This helps to prevent similar crimes from occurring in the future. However, relying on science to collect measurements which helps in determining guilt and is free of human error is the only act that abides by the due process model. However, all other aspects of the model, such as the presumption of innocence until proven guilty, adherence to a formal structure, and

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<sup>3</sup> Herbert L. Packer, Two Models of the Criminal Process, 113 U. PA. L. REV. 1, 9, 13.

not granting police arbitrary power, remain. These and other aspects are absent from the new act would lead one to believe that the act is more in line with the crime control model. Despite the prevalence of both the models in India, the court's decisions reveal a pattern favouring the due process model over the crime control model. As a result, the judge's mind is also used in such a way that aspects of the crime control model and the use of excessive authority by police officers are no longer present, and India is moving towards a more formally structured due process model for crime prevention. This shift from crime control to due process occurred with the decision in *Maneka Gandhi v Union of India*<sup>4</sup>, which held that no individual's liberty can be taken away. This is in direct opposition to the premise of the crime control model, which holds that an individual's liberty can be revoked in order to achieve crime repression in the country. The lack of a formal structure is essential in the crime control model, as evidenced by the arbitrary powers granted to police authorities and magistrates under section 6(2) of the new act, which makes refusal or resistance to give measurements an offence under section 186 of the Indian penal code while also absolving the authorities of any trial or proceedings for doing anything under the act to obtain these measurements under section 7. However, in *D.K Basu*<sup>5</sup>, the court ruled that a proper procedure or machinery should be established to ensure that no rights of the convicts are lost during the process. The retention of measurements for seventy-five years after is a violation of the right to be forgotten as recognised in the *Puttaswamy*<sup>6</sup> judgement. It also contradicts another fundamental principle of criminal law, the presumption of innocence. The assumption in this clause is that saving these individuals' records will aid in future crime prevention. This is consistent with the crime control model's presumption of guilt. The act presumes that the same person has the potential to commit the crime in the future, and thus there will always be a bias against him, even if he is innocent. However, unlike the crime control model, Indian criminal procedures rely on the presumption of innocence rather than the presumption of guilt. In the case of *Joginder Kumar v. State of Uttar Pradesh*<sup>7</sup>, the presumption of innocence was upheld. The burden of proof is not on the accused to prove his innocence; rather, it is on the state to prove his guilt. The presumption of guilt violates the fundamental right to self-incrimination guaranteed by Article 20(3) of the Constitution. According to this, no one can be forced to testify against themselves. The court upheld this fundamental right under article 20(3) in *Nandini Satpathy v P.L Dani*<sup>8</sup>. It stated that the accused had the right to remain silent and not answer certain questions if they were potentially self-incriminatory. This

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<sup>4</sup> *Maneka Gandhi v Union of India*, AIR 1978 SC 597.

<sup>5</sup> *DK Basu* AIR 1997 SC 610.

<sup>6</sup> *Justice K.S. Puttaswamy (Retd.) versus Union of India*, (2019) 1 SCC 1.

<sup>7</sup> *Joginder Kumar v. State of UP* 1994 SCC (4) 260.

<sup>8</sup> *Nandini Satpathy v. PL Dani* (1978) 2 SCC 424.

right against self-incrimination is also enshrined in CrPC section 161(2). Since compelling someone to testify against themselves shifts the burden of proof from the state to the person, they must prove their innocence.<sup>9</sup> However, under section 6(1) of the new act, it is legal for police officers to use necessary force if anyone refuses or resists giving their measurements. The accused's measurements are self-incriminating in nature, and thus cannot be taken if the accused denies giving them using the Nandini Satpathy ratio. This, however, contradicts Section 53 of CrPC, which states that any medical examination of an accused that may be used as evidence must not be self-incriminatory in nature. However, taking of measurements cannot be equated to medical examination. This is where the crime control model and its techniques used fail to prove an individual's guilt, because in India, no one can be forced to give statements that would prove their guilt, but according to the crime control model, police should be allowed to use their own discretionary powers to solve cases, and the assumption of guilt is the very basis of this. Similarly, the supreme court in the case of *Selvi V State of Karnataka*<sup>10</sup> held that testimonial compulsion violated their right to life and personal liberty by infringing on their right against self-incrimination under article 20(3). It also stated that drug-induced revelations and psychological response measurement would constitute an invasion of an individual's mental privacy, and that forcible extraction of testimonial responses is not protected or provided for under statute because it is not a reasonable exercise of police function. This mental privacy, as well as the right to speak or remain silent, as well as personal autonomy, are important aspects of Article 21, which should be read in conjunction with the right against self-incrimination. The intention behind making the definition of the word measurement exclusive by including general words like physical and biological samples in the new bill is to open the door to narcoanalysis through the use of force.<sup>11</sup> The officer of a police station and the magistrate authorised person are given guidelines on how to investigate cases under sections 154 to 173 of the CrPC. A deeper understanding of the CrPC would lead to the conclusion that it is the process of gathering, organising, and analysing evidence in order to determine an individual's guilt. However, this is not the only stage and other processes may be involved. It is very formal in nature, and the police cannot use excessive force to prove an individual's guilt because coercion and undue influence can cause people to accept things they did not do. As a result, the accused

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<sup>9</sup> Dave, D. (2019, December 3). Presumed innocent, right to remain silent and burden of proof. Times of India Blog. Retrieved April 24, 2023, from <https://timesofindia.indiatimes.com/blogs/voices/presumed-innocent-right-to-remain-silent-and-burden-of-proof/>.

<sup>10</sup> *Selvi V State Of Karnataka*, AIR 2010 Sc 1974.

<sup>11</sup> Parmar, A. (n.d.). Code of criminal procedure (amendment) act, 2022. Legal Service India - Law, Lawyers and Legal Resources. Retrieved April 24, 2023, from <https://www.legalserviceindia.com/legal/article-8639-code-of-criminal-procedure-amendment-act-2022.html>.

is being treated very well, and the police must submit a report to the magistrate detailing all of its findings. This demonstrates that they are under the supervision of someone who keeps track of their movements in a case and can be punished for noncompliance. When this act gives police officers a lot of discretionary and arbitrary power, it is important to remember that they, too, are subject to the authority of the magistrate, who can deny evidence under section 164 of the CrPC. We can conclude that the new act is heavily influenced by the crime control model. However, the majority of Indian criminal procedure and case law appear to be inspired by the due structure model, so this act does not apply. These flaws in the act make the expansion of powers problematic because it begins to infringe on an individual's rights.

### **III. CONCLUSION**

According to Packer, "if the Crime Control Model looks like an assembly line, the Due Process Model looks like an obstacle course." Whereas one model reflects a lot of discretion given to police officers in order to discharge justice by finding criminals, the other model also aims to find criminals but through various checks in the process that are referred to as obstacles in the course. They represent two opposing values for the administration of criminal justice in the country. For the criminal system to function properly, both processes must be in sync with one another, and only one of them will cause problems. The given new act employs only the crime control model, with no regard for the due process model, making it highly arbitrary in nature. According to the above analysis, the due process model is preferred in India over the crime control model because it provides a more formal structure and the police do not have any discretionary power, which could lead to harassment of the accused. As a result, in order for the new act to be effective without jeopardising any individual's rights, it would need to incorporate elements of the due process model as well.

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