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The Criminal Procedure (Identification) Act, 2021 – Boon or Bane

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ABSTRACT

The Criminal Procedure (Identification) Act, 2022 authorizes the executive to take measurements of convicts and other persons for the purpose of identification and investigation in criminal matters. It also authorizes the preservation of records and data. 87th Law Commission Report has suggested for replacing the age-old Identification of Prisoners Act, 1920. In addition to this, In March 2003, the Expert Committee on Reforms of the Criminal Justice System Chaired by Dr. Justice V. S. Malimath recommended amending the 1920 Act to empower the Magistrate to authorise the collection of data such as blood samples for DNA, hair, saliva, and semen. The Supreme Court also underlined the need for this in the case of State of U.P v. Ram Babu Misra . The Act further authorizes National Crime Records Bureau to collect the record of measurements, store, preserve and destroy the records, process such record with relevant crime and criminal records, and share and disseminate such records with any law enforcement agency. It also empowers a Magistrate to direct a person to give measurements for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law. This law also helps the investigating agencies to increase the ambit of persons and gather evidences which are legally admissible in the court of law. Though many features of the Act are laudable in nature, many constitutional issues such as right against self-incrimination under Article 20(3), right to privacy under Article 21, fundamental rights and human rights of the accused persons have been gravely affected. Therefore, in the light of this background, an attempt has been made in this paper to analyze the pros and cons of Criminal Procedure (Identification) Act, 2021.

Keywords: *Identification, Measurements, Enforcement, Investigation, Right to Privacy, Criminal Procedure.*

I. INTRODUCTION

Criminal Procedure (Identification) Act, 2021 has been enacted to collect various types of biological and physical samples for the purpose of obtaining necessary evidences for the investigation and confirmation of the guilt of the accused in criminal cases. The core object of

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this Act is to authorize for taking measurements of convicts and other persons for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected therewith². This Act has to delicate balance between the protection of individual's right to privacy and the need for obtaining necessary evidence for the investigation.

II. ARGUMENTS FOR BOON

- The Act seeks to collect 'measurements' from certain classes of persons and further also allow for their processing, storage, preservation, dissemination, and destruction, with the stated aim of identification and investigation in criminal matters and of prevention of crimes.
- The notable features which are different from the earlier Act is that it has expanded the definition of 'measurement', widened the number of persons from whom the data shall be collected & the number of authorities who can order the collection of data & allows the National Crime Record Bureau (NCRB) agency to be the sole agency to maintain the records of the data collected.
- 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.
- 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.
- The most notable feature under this Act is that 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.
- Further, this Act enables National Crime Records Bureau (NCRB) to 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.
- The most important object of this Act is to ensure the unique identification of those involved with crime and to help investigating agencies solve cases.
- The Act also introduces some modern techniques to capture and record appropriate body measurements.

² Statement of Objects and Reasons of the Act

- The most important feature of this Act is that the examinations under sections 53 and 53A of CrPC will now include blood, semen, hair sample, swabs and DNA profiling. This technological transition will help the authorities to identify criminals accurately.

III. ARGUMENTS FOR BANE

- The Act is vitiated on the ground of excessive delegation as it grants more powers to the Central and State Governments without providing guidelines in exercising these powers as per the dictum of *Subrmanian Swamy v. CBI*³ wherein it has been held that the conferment of authority to pass administrative orders would be violative of Article 14 of the Constitution, if such conferment is without any guidance, control or checks.
- The Act provides unbridled discretionary powers to police and prison officers as well as Magistrates to compel persons to allow the taking of their measurements. These types of enormous discretionary powers may result in misuse of these discretionary powers as held in the case of *Shreya Singhal v. Union of India*⁴ wherein it was observed that a law that restricts fundamental rights must be sufficiently clear and precise in terms of the extent, scope and nature of the interference allowed, along with the presence of sufficient safeguards to prevent abuse of powers by authorities. Grant of discretion by itself is not a matter of concern as long as there are guidelines governing the exercise of discretionary powers. However, discretion which is absolute and uncontrolled degenerates into arbitrariness as held in the case of *State of Punjab v. Khan Chand*⁵.
- In *Shayara Bano v. Union of India*⁶ wherein the Supreme Court held that the test of manifest arbitrariness was established as a separate ground for invalidating parliamentary legislation under Article 14. In that case, Justice Nariman observed that a legislation is manifestly arbitrary if the same is “done by the legislature capriciously, irrationally and/or without adequate determining principle... [the law is] excessive and disproportionate. The Act is arbitrary in not defining the term ‘measurements’ and failing to disclose a method for taking the measurements of the Act and in not providing 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.
- In *State of Bombay v. Kathi Kalu*⁷, the Supreme Court held that the person in custody

³ (2014) 8 SCC 682

⁴ (2015) 5 SCC 1

⁵ AIR 1974 SC 543 (8).

⁶ (2017) 9 SCC 1

⁷ 1961 AIR 1808

giving his specimen handwriting or signature or impression of his thumb, finger, palm or foot to the investigating officer cannot be included in the expression to be a witness under Article 20(3).

- Further, the Act is violating equality as it classifies the 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. Adding fuel to the fire, the arrested persons also may be compelled to give measurements other than biological samples.
- It is also expected that the Act may also lead to biases in handling of data leading to discriminatory police practices and further stigmatization of vulnerable communities.
- The Act insists to give measurements from all persons irrespective of involvement of the offence or severity of the offence or necessity of considering them as one of the witnesses. It is also worthwhile to note here that ‘behavioural attributes’ as measurements may be coercively taken from a person by making use of a compelled psychiatric evaluation. Such evaluation, when it leads to any incriminating admission would constitute a ‘testimonial compulsion’. An expansive interpretation of ‘behavioural attributes’ could even potentially be understood to include narco-analysis, polygraph tests or brain mapping which were prohibited expressly by the Supreme Court’s ruling in *Selvi v. State of Karnataka*⁸.
- The Act also did not provide any time frame 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.
- When there is a data breach in the Aadhar Depository & COWIN data, how far the data of the accused persons can be preserved in effective manner, In the absence of data protection, such extensive collection of measurements without any guidance raises concerns about third party access and breach of confidentiality.
- Though the Act has been enacted to improve investigation, detection and prevention of crimes, it failed to satisfy the fourfold requirement of the doctrine of proportionality as held in the case of *Justice KS Puttaswamy v. Union of India*⁹.

⁸ (2010) 7 SCC 263

⁹ (2017) 10 SCC 1

- The Act is also highly dangerous as it fails to strike a fair balance between individual's right to privacy and the aims of crime prevention, detection, investigation and prosecution on account of the indiscriminate nature of the powers of collection and retention of measurements without differentiating between convicts and suspects or other persons covered under the Act or the nature of the offences.
- The most agonizing point in this Act is Section 7 of the Act which says that no suit or any other proceeding shall lie against any person for anything done or intended to be done in good faith under this Act or any rule made thereunder. This raises a worrying concern that even if an innocent is arrested under this Act, he/she cannot approach the Court of law for quashing the case.

IV. CONCLUDING REMARKS

The intention and objects of the Criminal Procedure (Identification) Act, 2021 may seem to be good but in reality and in true colour, it may deprive many fundamental and human rights of the accused persons. In the name of prevention of the crimes, the Act tries to submerge the rights of individuals who are alleged to have committed any crimes. In short, the Act is curtailing the rights of convicts and non-convicts. Further, this Act introduces a greater number of administrative authorities and also give more powers than that is required under this Act. Over all analysis of the Act reveals that cons outweigh the pros as far this Act is concerned. So, this Act is nothing but a death nell to the Indian Criminal Justice System. Of course, litigations filed against the Constitutionality of the Act are pending in some of the High Courts of India. Now, all eyes are on the Indian Judiciary regarding the challenges reposed regarding the constitutionality of the Act.
