



Questioning The Feasibility of The Criminal Procedure (Identification) Act, 2022[†]

*Prof. (Dr) G.S. Bajpai**
*Sahajveer Baweja***

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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 53³

³ Criminal Procedure Code, 1973, S. 53.

On 18-4-2022, Parliament enacted the Criminal Procedure (Identification) Act, 2022¹ (“the 2022 Act”) with the aim to authorise the taking and preserving of the records of measurements of convicts and other persons for the purposes of identification and investigation in criminal matters. This Act seeks to repeal the Identification of Prisoners Act², 1920 (“the 1920 Act”) which is a colonial law that at present authorises the taking of measurements and photographs of convicts and others.

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* Vice-Chancellor of Rajiv Gandhi National University of Law, Punjab.

** Sahajveer Baweja, BA LLB student of Rajiv Gandhi National University of Law, Punjab.

¹ Criminal Procedure (Identification) Act, 2022.

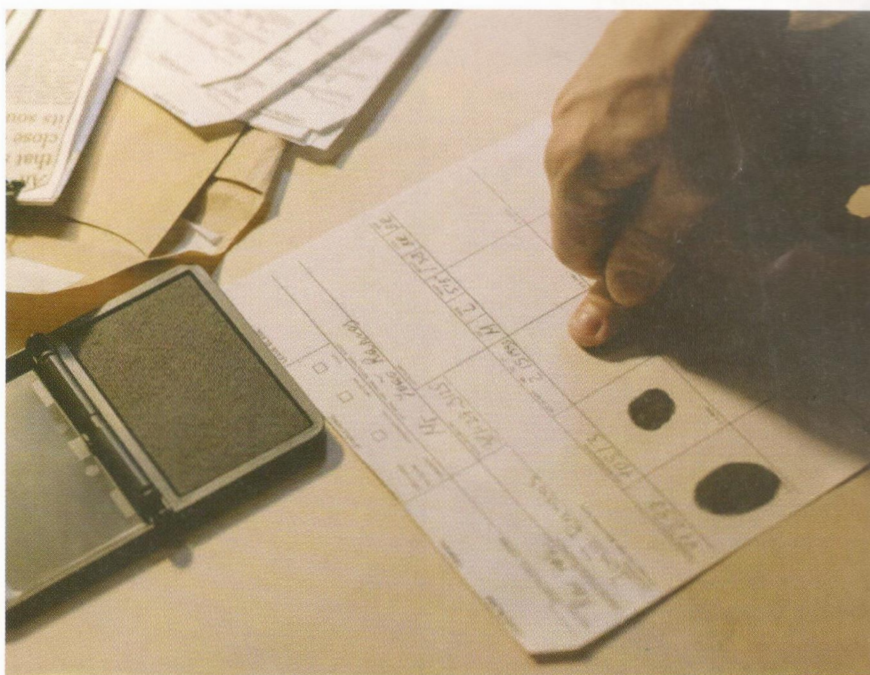
² Identification of Prisoners Act, 1920.

and 53-A⁴ 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.

Firstly, the 2022 Act does not define the process and definite framework as to how the measurements taken would be used for analysis and further utilised in a criminal investigation. The word “analysis” used in the context of measurement is vague and undefined which is an issue of concern because there is no certainty in regard to how much these measurements collected can be analysed and further what all data can be generated through the analysis of such measurements. The scope of the 2022 Act is limited to the collection of measurements for identification and investigation purposes and thus, the analysis of these measurements is a black hole that travels beyond the permissible scope of the law.

The *second* issue concerns the structural capacity to collect and maintain the record of measurements making it an issue of feasibility. The 2022 Act states that National Crime Records Bureau (NCRB) shall be responsible for the collection and administration of records of measurements in



consonance with the State Government or Union Territory Administration or any other law enforcement agencies. It is to be understood that NCRB was set up to function as a repository of information on crime and criminals⁵ and does not have any wing which can collect the measurements including biological samples. To collect such records, the Central and State Forensic Science Laboratories which are very limited in number would be required to play a substantial role.

Moreover, seeing the enlarged scope of persons covered under the 2022 Act, there is an operational difficulty in collecting such measurements followed by its analysis and preservation of records for 75 years in form of data where we do not have any legal framework for data protection in India. The Bombay High Court in *Jitendra v. State of Maharashtra*⁶ has observed that it is necessary for the laboratories to ensure proper quality control and quality assurance when dealing with the collection of biological samples and their analysis and the same should be of the highest standard. Thus, the question arises as to who would in actuality be responsible for collecting such measurements which are sensitive in nature, deals with body fluids and is at higher risk of quality being dented due to lack of care and caution.

The *third* area of concern is the nature of these measurements taken which may complicate the investigation and identification. In *K.S. Puttaswamy v. Union of India*⁷, it was observed that biometrics technology does not guarantee 100% accuracy and is only 99.76% accurate. The Court held that even though the percentage of error is very less but when such a failure rate is seen from the viewpoint of the total population, such failure rate itself

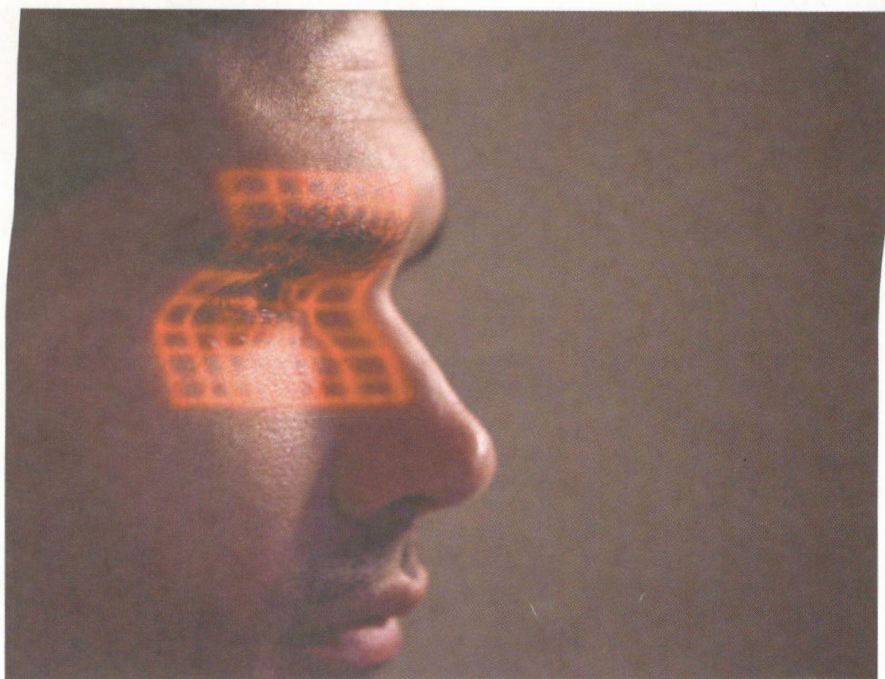
⁵ Origin of NCRB and its functions, available at <<https://ncrb.gov.in/en/origin-ncrb>>.

⁶ 2017 SCC OnLine Bom 8600.

⁷ (2018) 1 SCC 809.

would be a phenomenal figure. Moreover, the Court also took notice of the changing nature of biological patterns like failing of iris test due to blindness of person or changing of formation of fingerprints due to an individual getting old. However, when these measurements including biological samples are kept after analysis for such a long time, there is a probability that the measurements might change in some cases causing unnecessary victimisation of an innocent person. Therefore, the manner of collection of these measurements can lead to a disadvantage for criminal investigation.

Fourthly, the 2022 Act has permitted intrusion in the physical autonomy of the person by making refusal or resistance to give measurements as a criminal offence. There are suitable declarations regarding the non-interference in physical autonomy of a person over his own body to which India is also a signatory. Although the 1920 Act also criminalises resistance or refusal, the current 2022 Act aggravates the problem by including all types of prisoners within its scope. Further, the same is in direct violation of the Supreme Court's decision as given in *Selvi v. State of Karnataka*⁸, where the Supreme Court held that Article 20(3)⁹ of the Constitution aims to prevent the forcible "conveyance of personal knowledge that is relevant to the facts in issue". Through this 2022 Act, a suspect who has been arrested for an offence of petty thief or for pickpocketing can be forced to give any measurements that he may be directed to. Thus, such intrusion



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conflicts with physical autonomy and further violates the right to privacy of an individual which is a fundamental right under Article 21¹⁰ as laid down in *K.S. Puttaswamy v. Union of India*¹¹.

Per se, the intent of the 2022 Act is in line with the modernisation of criminal investigation. A strong case backed up by solid evidence is necessary to secure criminal convictions. However, the moot point is whether India can permit to be governed by such a law when there are not adequate safeguards present to tackle the potential abuse of this law. The road to modernisation is a soaring exercise that one should undertake but with a caveat that it should not travel beyond State administration so as to make it functional in a complete sense. At present, the 2022 Act fails to inspire the confidence of people and requires overhauling to make it implementable.

8 (2010) 7 SCC 263.

9 Constitution of India, Art. 20.

10 Constitution of India, Art. 21.

11 (2017) 10 SCC 1.