
A Study on the Criminal Procedure (Identification) Act, 2022: Balancing Security and Liberty

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Abstract

The Central Government has promulgated the Criminal Procedure (Identification) Act, 2022, with the objective of empowering authorities to collect and retain measurements and records of convicts and other individuals for the purposes of identification and investigation in criminal matters. The critical questions that arise in this context pertain to the necessity of this legislative enactment and the framework governing its implementation. Specifically, concerns revolve around the nature and scope of identification data to be collected and stored, the safeguards in place to prevent misuse, and the potential implications for individual privacy rights. While the Act is poised to facilitate more efficient investigations and expedite the delivery of justice, it also raises complex issues that necessitate careful consideration. This dichotomy underscores the need for a nuanced evaluation of the Act's provisions and potential consequences.

Key words

Criminal Procedure (Identification) Act 2022, Identification Data, Data Security, Right to Privacy, Criminal Investigation, Speedy Justice

1. Introduction

In an era characterized by an unprecedented surge in criminal activity, it has become increasingly evident that the legal framework must evolve in tandem to effectively address the complexities of modern crime. The imperative of adapting laws to keep pace with the dynamic nature of crime is crucial, as outdated legislation can hinder the delivery of justice and embolden perpetrators. The concept of fair justice is deeply intertwined with the principle of expeditious proceedings, wherein investigations are completed within a reasonable timeframe, thereby ensuring that justice is not only served but also perceived to be served.

A critical component of the investigative process is the identification of perpetrators, which often proves to be a formidable task, consuming considerable time and resources. The challenge is particularly pronounced in cases involving habitual offenders, who frequently exhibit a chameleon-like ability to alter their identities, thereby complicating the investigative process and rendering it increasingly difficult for law enforcement agencies to track and apprehend them. The ability to accurately and efficiently identify suspects is, therefore, a vital facet of every investigation, and its importance cannot be overstated.

In this context, the development and implementation of effective laws and investigative tools assume paramount importance, enabling law enforcement agencies to stay abreast of the evolving nature of crime and deliver justice in a timely manner. By leveraging modern technologies and methodologies, investigators can enhance their capabilities, streamline the investigative process, and ultimately bring perpetrators to justice more expeditiously. The synergy between law enforcement, legislation, and technology is, therefore, essential in the pursuit of justice and the maintenance of public safety. To maintain & the proper data, the Central govt passed the Act i.e. the Criminal Procedure (Identification) Act, 2022.

According to Section 4(1) of the Criminal Procedure (Identification) Act, 2022, the National Crime Records Bureau is empowered to facilitate investigation authorities in the prevention, detection, investigation, and prosecution of offences by:

- (a) collecting records of measurements from State Governments, Union Territory Administrations, or other law enforcement agencies;
- (b) storing, preserving, and destroying records of measurements at the national level;
- (c) processing such records in conjunction with relevant crime and criminal records; and
- (d) sharing and disseminating such records with law enforcement agencies.

However, a notable concern arises from the Act's silence on the potential misuse of offender data, which raises questions about the adequacy of safeguards for protecting individual privacy. While it is acknowledged that the right to privacy is not absolute and reasonable restrictions can be

imposed in the interest of public safety and justice, the Act's lack of explicit provisions regarding data privacy and security is conspicuous. The absence of clear guidelines on data protection and potential misuse may lead to apprehensions about the balance between individual privacy rights and the state's interest in crime prevention and investigation. It is essential to consider whether the Act's provisions adequately address the need for a balance between these competing interests.

2. Criminal Procedure (Identification) Act, 2022 & Fundamental Rights

The Criminal Procedure (Identification) Act, 2022, raises pertinent concerns regarding its compatibility with the fundamental rights enshrined in Part III of the Indian Constitution. Specifically, Articles 21 and 20(3) guarantee the right to privacy and the right against self-incrimination, respectively. The tension between protecting the rights of offenders and ensuring the efficacy of the criminal justice system is a disputable concern. On one hand, the Indian Constitution provides a robust framework for safeguarding individual rights, including those of accused persons. Article 21, which guarantees the right to life and personal liberty, has been interpreted by the judiciary to include the right to privacy. Similarly, Article 20(3) protects individuals from being compelled to incriminate themselves. These provisions underscore the importance of protecting individual rights and preventing abuse of power by the state. On the other hand, the Criminal Procedure (Identification) Act, 2022, appears to encroach upon these fundamental rights. The Act's provisions, which permit the collection and storage of sensitive information, may be seen as infringing upon the right to privacy. Moreover, the potential for misuse of such data raises concerns about the protection of individual rights. The challenge lies in striking an appropriate balance between individual rights and the need for effective law enforcement. In this context, the Act's provisions can be seen as a necessary measure to facilitate the investigation and prosecution of crimes, while also ensuring the protection of individual rights. The rights of victims, including the right to a speedy trial and a fair trial, are also an essential aspect of the criminal justice system. The Act's provisions can be seen as a means of ensuring that the rights of victims are respected and that justice is delivered in a timely and effective manner. Ultimately, the efficacy of the Criminal Procedure (Identification) Act, 2022, will depend on its implementation and the safeguards put in place to protect individual rights. It is essential to acknowledge that no

fundamental right is absolute, and reasonable restrictions can be imposed in the interest of public safety, national security, or the greater good.

3. Collection and Storage of Identification Data

a. Power of the court:- In order to control, the misuse of the provisions under the Act by the police authorities or investigating agencies, the powers have been given to the courts and it is incumbent upon the agencies to get the order from the court with regard to the measurement of the persons covered under the Act. The Act, 2022 provides specific provisions how to deal with regard to the applications of measurements etc.

Section 5. Power of Magistrate to direct a person to give measurements:- *Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions.*

Section 6. Resistance to allow taking of measurements:- *(1) If any person who is required to allow the measurements to be taken under this Act resists or refuses to allow taking of such measurements, it shall be lawful for the police officer or prison officer to take such measurements in such manner as may be prescribed. (2) Resistance to or refusal to allow the taking of measurements under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).*

It will includes:

Section 3. Taking of measurement:- *Any person, who has been,*

(a) convicted of an offence punishable under any law for the time being in force; or

(b) ordered to give security for his good behaviour or maintaining peace under section 117 of the Code of Criminal Procedure, 1973 (2 of 1974) for a proceeding under section 107 or section 108 or section 109 or section 110 of the said Code; or

(c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law,

shall, if so required, allow his measurement to be taken by a police officer or a prison officer in such manner as may be prescribed by the Central Government or the State Government: Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.

4. Collection, storing, preservation of measurements and storing, sharing, dissemination, destruction and disposal of records:- (1) The National Crime Records Bureau shall, in the interest of prevention, detection, investigation and prosecution of any offence under any law for the time being in force:-

(a) collect the record of measurements from State Government or Union territory Administration or any other law enforcement agencies;

(b) store, preserve and destroy the record of measurements at national level;

(c) process such record with relevant crime and criminal records; and

d) share and disseminate such records with any law enforcement agency, in such manner as may be prescribed.

Power also given to The State Government and Union territory Administration that they can choose and may notify an appropriate agency to collect, preserve and share the measurements in their respective jurisdictions.

Time period

According to section 4(2), The record of measurements shall be retained in digital or electronic form for a period of seventy-five years from the date of collection of such measurement:

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, is released without trial or 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.

Criminal Procedure (Identification) Rules, 2022

For the effective implementation of the Criminal Procedure (Identification) Act, 2022 (11 of 2022), the Central Government by using the powers conferred by section 8 of the Act, makes the following rules i.e Criminal Procedure (Identification) Rules, 2022:-

Taking of measurements.-

Sub-rule 1 of Rule 3. *The authorised user or any person skilled in taking the measurements or a registered medical practitioner or any other person so authorised in this behalf may take the measurements of a person for the purposes of the Act;*

Provided that the measurements of a person arrested in connection with an offence under Chapter IXA or Chapter X of the Indian Penal Code, 1860 (45 of 1860) shall be taken with the prior written approval of a Police officer not below the rank of Superintendent of Police:

Provided further that the measurements of a person charged with violation of any prohibitory order issued under section 144 or section 145 or arrested under section 151 of the Code of Criminal Procedure, 1973 (2 of 1974) shall not be taken unless such person is charged or arrested in connection with any other offence punishable under any other law for the time being in force:

Provided also that the measurements of a person shall not be taken on the initiation of proceeding under section 107 or section 108 or section 109 or section 110 of the said Code unless such person has been ordered to give security for his good behaviour or maintaining peace under section 117 of the said Code for a proceeding under the said sections.

Sub-rule 2 of rule 3 *The Bureau shall issue the Standard Operating Procedures for taking the measurements, which may include the following, namely:*

- (a) *specifications of the equipments or devices to be used for taking measurements;*
- (b) *specifications and the format, including digital or physical, of the measurements to be taken;*
- (c) *method of handling and storage of measurements in the database at the level of State Government or Union territory Administration in a format compatible with the database of the Bureau;*
- (d) *information technology system to be used for taking of measurements:*

Provided that the State Government or Union territory Administration using its own information technology system shall provide compatible application programming interfaces for sharing the measurements or record of measurements with the Bureau.

Rule 4. Manner of taking of measurements of a person who resists or refuses to allow taking of measurements:-

If any person who is required to allow the measurements to be taken under the Act resists or refuses to allow taking of such measurements, the authorised user shall take the measurements in accordance with the provisions of sections 53 and 53A of the Code of Criminal Procedure, 1973 (2 of 1974).

Rule 5. Manner of collection, storing, preservation, processing, sharing, dissemination, destruction and disposal of measurements:-

(1) The record of measurements shall be stored and preserved in a secure and encrypted format as specified in the Standard Operating Procedures.

(2) In case any measurement is collected in physical form or in a non-standard digital format, it shall be converted into standard digital format and thereafter uploaded in the database as per the Standard Operating Procedures, which may include the following, namely:-

- (a) process to be followed by an authorised user for uploading the measurements in the database using the registered device;

(b) standard digital format in which each type of measurements shall be converted before uploading into the database;

(c) encryption method to be followed;

(d) manner of registering the device.

(3) An authorised user, for matching the record of measurements of a person, shall forward the request to the Bureau through the device and the Bureau shall match the record and provide report to the authorised user through secure network as soon as possible.

(4) The procedure for destruction and disposal of records shall be specified in the Standard Operating Procedures.

(5) (i) Any request for destruction of record of measurements shall be made to the Nodal Officer to be nominated by the respective State Government or Union territory Administration or Central Government, as the case may be, concerned with the criminal case in which the measurements were taken. (ii) The request for destruction of the record of measurements shall be recommended by the Nodal Officer to the Bureau after verifying that such record of measurements is not linked with any other criminal cases.

(6) Any act of unauthorised access, distribution or sharing of data collected under the Act shall be punishable as per the provisions of the Indian Penal Code, 1860 and the Information Technology Act, 2000.

Act and the judiciary

The validity of the Act can be challenged through judicial review, which provides a crucial mechanism for ensuring that legislative enactments conform to constitutional provisions. The judiciary plays a vital role in balancing individual rights with the need for effective law enforcement and maintenance of public order. The judiciary will play a crucial role in ensuring that the Act's provisions are interpreted in a manner that balances individual rights with the need for effective law enforcement.

In the case titled as **Pravinsinh Nrupatsinh Chauhan Vs State of Gujarat**¹, the Hon'ble Supreme Court held that taking of voice sample is permissible under the Criminal Procedure (Identification) Act 2022 and same is not violation of the protection provided under Article 20(3) of the Indian Constitution i.e. Right against Self Incrimination. The court held that Voice sample is a physical attribute and not testimonial in nature and as such it is not against Article 20(3) of the Indian Constitution and upheld the order passed by the Gujarat High Court. The same view has been taken by the Hon'ble Delhi High Court in the case titled as **Tarak Nath Gupta Vs State of Delhi**.²

In the case titled as **Mohammad Mahaboob Ali Vs State of Telangana**³, the Hon'ble Telangana High Court held that taking of photograph and video record of the accused for comparison purpose is permissible under the Criminal Procedure (Identification) Act 2022 and the Magistrate is empowered to order for taking of measurement including photographs and videos for investigation purpose if required.

¹ 2023 (4) Cg LJ 40 (SC)

² 2024 (1) CriCC 377 (Delhi)

³ 2023 (2) Alt (CriL) 349 (Telangana)