

# CONSTITUTIONAL IMPEDIMENTS IN CRIMINAL PROCEDURE IDENTIFICATION ACT 2022: AT A GLANCE

*Written by Dr. Kapil Chaurpagar*

*Assistant Professor, Shri Omkarnath Malpani Law College, Sangamner, Pune, Maharashtra,  
India*

DOI: [doi.org/10.55662/SALRJ.2022.805](https://doi.org/10.55662/SALRJ.2022.805)

---

---

## ABSTRACT

An investigation is a critical component of criminal procedure. Investigation is closely related to collection of evidence and identification of the accused. The Criminal Procedure (Identification) Act, 2022 has significantly altered criminal identification methods. It supersedes the Identification of Prisoners Act of 1920. The concept of measurements was restricted in previous legislation, but it now encompasses almost every biological material as a measurement. The information specified under the Act forms part of the personal data of individuals and is thus protected under the right to privacy of individuals. In 2017 Supreme Court of India in historic judgment has held that the right to privacy is a fundamental right. It may also fail Article 14 requirements of a law to be fair and reasonable and for equality under the law. The important challenges involved in this Act are that data can be collected not only from convicted individuals, but also from individuals arrested for any offence and from any other person to aid an investigation. Compulsory taking of measurements of an accused would come within the mischief of Article 20 (3). Act enables coercive drawing of samples and possibly involves a violation of Article 20(3), which protects the right against self-incrimination. Therefore, scope for arbitrariness is present in this Act which can possibly be misused by the police authorities.

**Keywords:** Criminal Investigation, the Criminal Procedure (Identification) Act, 2022, Technology & Evidence Collection, Right to Equality and Privacy

## INTRODUCTION

An investigation is a critical component of criminal procedure. Investigation is the first step taken after a crime is committed or information about a crime is received by a police officer. The goal is to identify the offender and bring him to trial so that he can be punished in accordance with the provisions of the law.<sup>i</sup> Criminal procedure code allows the officer in charge of a police station to investigate a case in his territorial jurisdiction without the need for a Magistrate's order if the offence is cognizable.<sup>ii</sup> Similarly the code establishes the procedure for police investigation and evidence collection.<sup>iii</sup> The code also provides that if there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence,<sup>iv</sup> so investigation is closely related to collection of evidence and identification of the accused.

The Criminal Procedure (Identification) Act, 2022, recently went into effect after being passed by Parliament in April 2022. It has significantly altered criminal identification methods. It supersedes the Identification of Prisoners Act of 1920, a colonial-era law enforced by British rule, and allows police officers to take measurements of people convicted, arrested, or facing trial in criminal cases. The Identification of Prisoners Act, 1920, a previously enacted law, allows police officers to collect certain identifiable information (fingerprints and footprints) of people, including convicts and arrested people.<sup>v</sup> A Magistrate may also order measurements or photographs of a person to aid in the investigation of a crime. If the accused is acquitted or discharged, all material gathered from his side must be destroyed.

## ROLE OF TECHNOLOGY IN EVIDENCE COLLECTION

The use of science and technology to detect and investigate crime and administer justice is not a new concept. Recent technological advancements are opening up new avenues for performing accurate scientific measurements. The advantages of real-time, on-site forensic investigations are numerous, and such technology has the potential to significantly improve the criminal

justice system's speed and efficacy.<sup>vi</sup> From the passage of the Identification of Prisoners Act in 1920 to the present day, there has been a tremendous advancement in technology, which has undoubtedly influenced the measurements used in criminal investigations. There are numerous scientific techniques available in this regard. However, DNA technology is the most important, a proposed bill in this regard is also pending in India's Parliament. The bill is titled (Use and Application) Regulation Bill, 2019 and it establishes a framework for using DNA technology for this purpose.<sup>vii</sup>

In this context, the Law Commission of India felt compelled to introduce new scientific techniques to improve the 1920 Act for criminal investigation in 1980.<sup>viii</sup> Similarly, in 2003, the Mallimath Committee for Reforms of the Criminal Justice System recommended amending the 1920 Act to allow the Magistrate to authorise the collection of data such as blood samples for DNA, hair, saliva, and semen.<sup>ix</sup> Similarly, in the case of *State of UP vs Ram Babu Misra*, the Supreme Court emphasised the importance of amending this law.<sup>x</sup> Therefore this Act is enacted by Parliament of India in April 2022, with object to replace the Identification of Prisoners Act, 1920.<sup>xi</sup> This paper attempts to throw light on various ambiguous provision of the present Act. Which will be the constitutional impediment in the implementing the present Act.

## IMPORTANT FACETS OF THE ACT

The Criminal Procedure (Identification) Act of 2022 authorizes the taking of measurements of convicts and other persons for the purposes of identification and investigation in criminal matters, as well as the preservation of records, as well as matters connected with and incidental thereto. As a result, this Act calls for the use of modern techniques to capture and record appropriate body measurements. The concept of measurements was restricted in previous legislation, but it now encompasses almost every biological material as a measurement. According to the Act, 'measurements' includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973.<sup>xii</sup>

This Act primarily addresses three major issues. The first is the type of data that may be collected. Secondly, an individual from whom such data may be collected, and third is, the authority that may authorize such collection. It also includes a provision for a central data base where all of these records will be stored. Resistance or refusal to provide data will be considered an obstructing a public servant from performing his duties under both the 1920 and 2022 Acts.<sup>xiii</sup>

## **THE ROLE OF NATIONAL CRIME RECORDS BUREAU (NRCB)**

The NCRB was established in 1986 to serve as a repository of information on crime and criminals to assist investigators in linking crime to perpetrators. It has linked over 15,000 police stations and 6,000 higher level police offices across the country. The NCRB's Central Fingerprint Bureau is a national repository of all fingerprints in the country, with over one million ten-digit finger prints database of criminals both convicted and arrested, as well as a search facility on Fingerprint Analysis and Criminal Tracing System.<sup>xiv</sup> The NCRB will be the central agency in charge of maintaining records under the new Act. It will share the information with law enforcement. Furthermore, states/UTs may notify agencies in their respective jurisdictions to collect, preserve, and share data. The collected data will be kept in digital or electronic form for 75 years. If a person is acquitted after all appeals or released without a trial, their records will be destroyed. In such cases, however, a Court or Magistrate may order the retention of details after recording the reasons in writing.<sup>xv</sup> The advantage of centralised data is that it can be accessed from anywhere, and it will be a new milestone in determining the accused's criminal record. As a result, it aims to ensure the unique identification of those involved in crime and to assist investigating agencies in solving cases. It will improve the efficiency and timeliness of criminal investigations while also increasing the conviction rate.

## **RIGHT TO EQUALITY AND PRIVACY**

The Act permits the collection of certain identifiable information about individuals for the investigation of crime. The information specified under the Act forms part of the personal data of individuals and is thus protected under the right to privacy of individuals. The right to

privacy is a component of various legal traditions that seek to limit governmental and private actions that endanger individuals' privacy. The right to privacy is mentioned in over 150 national constitutions.<sup>xvi</sup> In India this right is protected under Article 21.<sup>xvii</sup> In 2017 Supreme Court of India in historic judgment has held that the right to privacy is a fundamental right.<sup>xviii</sup> The Court established principles that should govern any legislation that restricts this right. These include a public purpose, a rational link between the law and the purpose, and the fact that this is the least intrusive way to achieve the goal. That is, the invasion of privacy must be both necessary and proportionate to the purpose. On several parameters, the Act may fail this test. It may also fail Article 14 requirements of a law to be fair and reasonable and for equality under the law.<sup>xix</sup> In E.P. Royappa's landmark decision, the Supreme Court stated, "From a positive standpoint, equality is the antithesis of arbitrariness." When an Act is arbitrary, it implies that it is unequal in both political logic and constitutional law, and thus violates Article 14.<sup>xx</sup> As a result, any authority that has ambiguous or arbitrary power is clearly violating the principle of equality. In the landmark case of *Ningammar v. Chikkaiah*,<sup>xxi</sup> The Karnataka High Court ruled that forcing a person to submit to a medical examination of his blood test without his consent or against his will violates his fundamental right to life and liberty. Despite its apparent technicality, the legislative proposal jeopardizes the right to privacy of all Indian citizens, not just those convicted of crimes. According to a simple interpretation, it allows for the collection of samples from political protestors. Lawmakers were concerned that the government would use the law to target political opponents.<sup>xxii</sup>

The important challenges involved in this Act are that data can be collected not only from convicted individuals, but also from individuals arrested for any offence and from any other person to aid an investigation. Second, the data gathered does not have to be related to the evidence required for the case. Third, the data is stored in a central database that can be accessed from anywhere, not just the case file. Fourth, the data is kept for 75 years, which effectively means for life, and fifth, safeguards have been weakened by lowering the level of official authorised to collect the data. These issues and their consequences are discussed further below.

## WHOSE DATA CAN BE COLLECTED?

The Act broadens the set of people whose data can be collected to include anyone who has been convicted or arrested for any offence. According to the Act, data can be collected from the following individuals.

- (a) Convicted of an offence punishable under any law for the time being in force; or
- (b) Ordered to give security for his good behavior or maintaining peace under section 117 of the Code of Criminal Procedure, 1973 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.<sup>xxiii</sup>

This would include, for example, someone arrested for violating traffic rules and negligent driving, which carries a maximum prison sentence of six months. It also broadens the Magistrate's authority to order collection from anyone (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. The term in Clause (c) 'under any law for the time being in force' is very wide and can be misused. Similarly, the arrest in preventive detention law is one more controversial area. Therefore, scope for arbitrariness is present in this Act.

## WHO MAY ORDER DATA TO BE COLLECTED?

A Magistrate may order the collection of data to aid in the investigation of an offence under the 1920 Act. According to the Law Commission (1980), the 1920 Act did not require the Magistrate to provide reasons for his order. 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 said Act 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.<sup>xxiv</sup>

## WHAT INFORMATION CAN BE GATHERED?

The Bill broadens the scope of data collection to include biometrics (fingerprints, palm prints, foot prints, iris and retina scan), physical and biological samples (not defined but could include blood, sperm, saliva, and so on), and behavioural characteristics (signature, handwriting, and could include voice samples). It does not restrict the measurements to those needed for a particular investigation. For example, the Act allows for the collection of a person's handwriting specimen if they are arrested for reckless and negligent driving. It also does not expressly forbid taking DNA samples (which may contain information other than just for determining identity). 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”.<sup>xxv</sup>

### *Biological Samples*

In the case of biological samples, the Act makes an exception. A person may refuse to provide such samples unless he is arrested for an offence that is either (1) against a woman or a child, or (2) carries a minimum sentence of seven years imprisonment. The first exception is broad. For example, it could include a theft case involving a woman. A provision like this would also violate the equality of law between people who stole something from a man and someone who stole something from a woman.

## DATA RETENTION PERIOD

The Act allows for the data to be kept for 75 years. The data would be deleted only after a person arrested for an offence was acquitted or discharged. The retention of data in a central database and its potential future use in criminal investigations may also violate the necessity and proportionality standards. Collection can also lead to mass surveillance, with the database

created under this law being combined with databases from the Crime and Criminal Tracking Network and Systems (CCTNS).<sup>xxvi</sup>

## ARTICLE 20 (3) PROHIBITION AGAINST SELF INCRIMINATION

Article 20 Clause (3) states that no person accused of a crime shall be compelled to testify against himself. Thus, Article 20(3) embodies the general principle of English and American law that no one shall be compelled to give testimony that could lead to criminal prosecution. It is the prosecution's responsibility to prove the crime. The accuser is not required to make any admissions or statements against his will. This fundamental rule of criminal jurisprudence against self-incrimination has been raised to a rule of constitutional law in Article 20 (3).<sup>xxvii</sup> This guarantee extends to any person accused of an offence and prohibits all kind of compulsion to make him a witness against himself. Explaining this in *M.P Sharma vs Satish Chandra*<sup>xxviii</sup>, the Supreme Court observed that this right has embodied the following essential.

- (1) It is a right pertaining to a person who is 'accused of an offence'
- (2) It is protection against 'compulsion to be a witness'
- (3) It is protection against such compulsion relating to his giving evidence 'against himself'

Thus ruling of the court is the expression 'to be a witness' is very wide so as to include oral, documentary and testimonial evidence. It further held that the compulsory taking of finger impression or specimen handwriting of an accused would come within the mischief of Article 20 (3). In significant judgment *Selvi vs State of Karnataka*<sup>xxix</sup> Supreme court held that, Narcoanalysis, Polygraphy and Brain Finger Printing tests without the consent of the accused is violation of Article 20 (3). But this Act enables coercive drawing of samples and possibly involves a violation of Article 20(3), which protects the right against self-incrimination. The present Act implied use of force in collection of biological information could also lead to Narcoanalysis and Polygraphy and Brain Finger Printing tests. Although it provides<sup>xxx</sup> that an arrested person (not accused of an offence against a woman or a child) may refuse the taking of samples, not all detainees may know that they can indeed decline to let biological samples be taken. And it may be easy for the police to ignore such refusal and later claim that



they did get the detainee's consent. So, these are the drawbacks in the present Act which can possibly be misused by the police authorities.

## CONCLUSION

From the above analysis we can conclude that, the concern over privacy and the safety of the data is undoubtedly significant. Indian laws are still not fulfilling the compliance of strong data protection law in this background details of personal information of citizens could be misused and there is no penal provision in regard till date. But on the other hand it is imperative to use modern scientific techniques which will help the law enforcement agencies to curb the crime and criminals. This will ultimately prove beneficial to the society at large. Due to ambiguous provision under the present law some constitutional impediment has cropped up in this regard and it could be challenged in the courts of law for being violative of constitutional safeguards. Similarly, there is eminent threat to political accused or non-criminal person that their biological samples could be misused by the authorities. Therefore, in this backdrop necessary clarity should be brought by suitable changes in the present Act so as to protect the citizens from states' arbitrary actions.

## ENDNOTES

<sup>i</sup> [www.legalserviceindia.com/legal/article-5464-role-of-police-and-its-power-to-investigate.html](http://www.legalserviceindia.com/legal/article-5464-role-of-police-and-its-power-to-investigate.html) (Last visited 2/9/22)

<sup>ii</sup> Section 156 of Criminal Procedure Code 1973

<sup>iii</sup> Section 157 of Criminal Procedure Code 1973

<sup>iv</sup> Section 53 of Criminal Procedure Code 1973

<sup>v</sup> The Identification of Prisoners Act, 1920.

<sup>vi</sup> Kloosterman A, Mapes A, Geradts Z, van Eijk E, Koper C, van den Berg J, Verheij S, van der Steen M, van Asten A. The interface between forensic science and technology: how technology could cause a paradigm shift in the role of forensic institutes in the criminal justice system. *Philos Trans R Soc Lond B Biol Sci.* 2015 Aug 5;370(1674):20140264. doi: 10.1098/rstb.2014.0264. PMID: 26101289; PMCID: PMC4581008.

<sup>vii</sup> The DNA Technology (Use and Application) Regulation Bill, 2019.

<sup>viii</sup> Eighty-Seventh Report on Identification of Prisoners Act, 1920, Law Commission of India, 1980.

<sup>ix</sup> Committee on Reforms of Criminal Justice System Report (Volume 1), Ministry of Home Affairs, March 2003.

<sup>x</sup> AIR 1980 SC 791

<sup>xi</sup> The Criminal Procedure (Identification) Bill, 2022.

<sup>xii</sup> Section 2 (b) of the Criminal Procedure Identification Act 2022

<sup>xiii</sup> <https://prsindia.org/billtrack/the-criminal-procedure-identification-bill-2022> (Last visited 05/9/22)

<sup>xiv</sup> <https://ncrb.gov.in/en/directors-desk> (Last visited 12/9/22)

<sup>xv</sup> *Ibid*

<sup>xvi</sup> <https://cic.gov.in/sites/default/files/Right> (Last visited 12/9/22)

<sup>xvii</sup> Article 21 of the Constitution of India.

<sup>xviii</sup> Justice K.S. Puttaswamy (Retd) vs. Union of India, W.P. (Civil) No 494 of 2012, Supreme Court of India, August 24, 2017.

<sup>xix</sup> Article 14, The Constitution of India

<sup>xx</sup> AIR 1974 SC 555

<sup>xxi</sup> AIR 2000 Kar 50

<sup>xxii</sup> <https://www.hindustantimes.com/india-news/centre-formulates-rules-for-criminal-identification-act-101663612347859.html> (Last visited 22/9/22)

<sup>xxiii</sup> Section 3 of the Criminal Procedure Identification Act 2022

<sup>xxiv</sup> Section 2 (c) and (e) of the Criminal Procedure Identification Act 2022

<sup>xxv</sup> Section 53, The Code of Criminal Procedure, 1973.

<sup>xxvi</sup> <https://www.drishtias.com/daily-updates/daily-news-analysis/criminal-procedure-identification-act-2022> (Last visited 22/9/22)

<sup>xxvii</sup> Pandey.J.N, The Constitutional Law of India, Central Law Agency, Alahabad, 48<sup>th</sup> edi, p.234

<sup>xxviii</sup> AIR 1954 SC 300

<sup>xxix</sup> AIR 2010 SC 1974

<sup>xxx</sup> Proviso of Section 3 of the Criminal Procedure Identification Act 2022