



IS CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022, A VIOLATION TO RIGHT TO PRIVACY?

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ABSTRACT

The Criminal Procedure (Identification) Act 2022 is an Act which repealed the Identification of Prisoners Act. The emergence of such Act has given a broadening aspect to the modern scientific technology when compared to the Act which was repealed. The Act has given different and a widening purview by mentioning what kind of measurement or data to be collected, from whom such can be taken, who can collect and under whose order such can be collected. The Act plays a major significant role in providing aid to investigating agency. The Act therefore helps such agencies to function better and efficiently. It even helps in increasing the conviction rate and also it provides evidence to be submitted and needed for the judicial purpose in solving cases. Even if there are certain significant in the Act, there exist some drawbacks to this Act.

Keywords: Right to privacy, data, measurements, identity.

1. INTRODUCTION

In our modern day, there occurs rise in the field of technology and the dynamic change in the field of the legal world which provides a drastic outlook on privacy and security in data issues and it matters each individual. The Criminal Procedure (Identification) Act¹ has been approved by India's parliament. The Identification of Prisoners Act², which permitted and

¹ Criminal Procedure (Identification) Act, 2022

² Identification of Prisoners Act, 1920

was in existence for the use of identification and investigative techniques on the convicted was repealed by this Act. The new act provides a widespread of an effective measure of physical and biological samples and its analysis and also the behavioural characteristics such as handwriting, fingerprint imprints, palm prints, and iris and retina scans as well as their analysis of an individual. The new techniques of modern scientific world. It has been said that the analysis in measurement or data reports of that profiles can be created from a wide range of data sources. Such measurements are expected to be kept in digital or electronic form for 75 years as per the act says. It is believed that privacy is something that should never be interfered. When it comes to the matter of privacy it seems that this act threatens the right to privacy. The law is meant to collect information and data from those individuals who may be convicts, accused or anyone else. The motive behind such data collection is to aid the investigation. The law endeavours a scientific method that would incorporates the use of new technology such as DNA profiling, the hair sampling, blood samplings and also when the behaviour analysis as handwriting signature etc. and many other things. So that it would help to provide effectiveness in the field of investigation by providing aid to their investigation.

2. A DETAILED STUDY ON CRIMINAL PROCEDURE (IDENTIFICATION) ACT,2022

2.1 BACKGROUND

On March 28,2022, the Lok Sabha adopted the Criminal Procedure (Identification) Bill 2022, and it has been after approved on April 4, 2022. The Rajya Sabha approved this Bill on April 6, 2022 by replacing the Identification of Prisoners Act, 1920. According to the repealed Act, the police are permitted to take some personally identifiable data or measurements or information such as fingerprints, footprints etc. from individuals, including arrested and convicted individuals who are under good behavior. The Magistrate has the power to order for such measurements or data to be collected. All materials must be destroyed in the event of the accused's acquittal or conviction. But with the emergence of the new Act, there emerged a broadening to the term data or measurement, even in the term Magistrate, police official etc.

2.2 OBJECTIVES OF THE NEW ACT

The Act's main objective is to support and aid the agencies such as investigating agencies. With the help of this Act it is believed that difficulties in identifying the crimes and criminals may get reduced. And with the help of this Act the conviction rate may get increased. The Act helps in aiding such agencies in investigation by giving the authorization and permission to collect and examine samples both physical and biological from prisoners, convicts, accused and other people. Such is done in order to identify them and conduct effective criminal investigations. The Act considerably widens the idea of collection of data, that is the range of data that can be gathered from a person, as well as who can provide it, that may be the accused, convicts, and which officials are permitted to do so. The Act not just expands the authority of the State but also the authority of the state's law enforcing agencies. The authority of such is with regard to collecting data such as biometric and other biological data from anybody held by the police officials, including those who are subject to laws requiring preventative custody, convicts, accused during a criminal investigation etc.

2.3 THE CONCEPT AND SIGNIFICATION OF THE ACT

When compared to the old Act³, the new act has assisted to expand the purview in different ways. By expanding the spectrum of data or measurements or material that can be obtained has been changed. It has been made a vast change to the data to be collected when compared to the other Act. And the next purview is including not only individuals that has been convicted but also anyone that have been arrested and those that are detained as just a condition like any preventive detention statute or for under good behavior. It even broadened the police officials who are eligible to collect the data from the individuals, where it permits Officer in charge of a police station, or of rank Head Constable or above, and even Head Warder of a prison. Section 7⁴ clearly states that there will there will be no suit or any proceeding may exist against any person who under a good faith collects the data as per the law prescribes.

There are certain changes made in this new Act such as collection of data not only include the data of fingerprint and footprint but also a wide and vast change has been made to it. The

³ Identification of Prisoners Act, 1920

⁴ Criminal Procedure (Identification) Act, 2022

section 2(1)(b)⁵ of this act permits the examination or collection of data which includes the data of palm, foot, finger prints, iris, retina, blood samplings, hair samplings, handwriting, signature etc. Under section 53 and 53A⁶, where section 53 says “Examination of accused by medical practitioner at the request of police officer” and section 53A says “Examination of person accused of rape by medical practitioner”. The act even widened the aspects of the individuals from whom the data to be collected. As in the old Act it was mentioned that it must be collected from the individuals who has been convicted or otherwise an accused where the punishment is rigorous imprisonment of one year or from the person who have been undergone for good behavioural. In the matter of new Act, it prefers that the data to be collected must be from those individuals who have been either convicted or ana accused where the punishment is either 7 years or for an offence against a woman or a child. Or any person in order to maintain peace been asked to give security for the good behaviour which is under section 117⁷.

The act even widens the aspect of the term Magistrate. Section 2(1)(a)⁸ of this Act expands that the term Magistrate includes Metropolitan Magistrate for the Metropolitan areas and for the other areas it is the Judicial First-Class Magistrate and for the matters of security for good behaviour and peace maintaining, it is Executive Magistrate.

Under section 4⁹ of the new Act, the data to be collected is stored and preserved in the Bureau called National Crime Records Bureau (NCRB) which runs under the Ministry of Home Affairs. The Bureau was setup on 1986 on the recommendation of National Police Commission. According to this Act these data will be stored, and it is also preserved and even be shared by the Bureau with any agency which is a law enforcement agency. Under section 4(2)¹⁰ these data can be preserved and also been stored for almost for a period of 75 years. The main aim is for helping the agencies such as investigating agencies by providing and make sure the particular or uniqueness of identification of persons involved in crimes. And by this it would be more helpful in the fields of crime solving and it may also help in reducing the unsolved case. Thus, there happens increased in the rate of convictions in the country.

⁵ Id./

⁶ Criminal Procedure Code,1973

⁷ Id.

⁸ *Supra* note 4

⁹ Id.

¹⁰ Id.

When coming to the significant of this act, it is an opening to acceptance of modern technology. It widespread to the emergence on modern technology. The modern scientific technology has been given a new face and accuracy to this world. With the help of modern scientific technology such a DNA profiling, blood samplings, hair samplings, handwriting etc. would give appropriate aid which is needed for an investigation and crime solving purposes. It is believed that it would help to make an accuracy.

When such data and measurement which is collected would provide accuracy, then it would be more helpful for the investigating agency. Therefore, it can be taken as valid evidence such as real evidence. It would help these agency and legal system to gather and use this legally accepted evidence which might be sufficient enough.

When such helps the investigating agency in solving cases, it would make such agencies more functioning. And even it helps in increasing the efficiency of such investigating agency. It would make in increase the rate of conviction as it would provide the accuracy with the help of measurements and data which is collected. Therefore, it would be helpful in reducing the unsolved case.

3. A COMPARISON WITH THE IDENTIFICATION OF PRISONERS ACT

The Criminal Procedure (Identification Act)2022 has replaced the Identification of Prisoners Act which was a colonial era law. The Identification of Prisoners Act defines measurements which as finger impressions and footprint impressions and even it states that only under the permission of the First-Class judicial Magistrate, one can be undergone to be photographed. Whereas the few major alterations made in Criminal Procedure (Identification) Act,2022 are: -

- Addition of: -
 - Biological and physical samplings and the analysis of such as blood, semen, swab, hair sample etc.
 - Behavioral attributes which include signatures, handwriting
 - Examinations of retina and iris scan

The provisions in the case of the old Act says that the individuals whose data to be collected must be either convicted or an arrested person where the punishment is rigorous imprisonment of one year or more, or from an individual who has been ordered to give security for good behavior and also maintaining security. And also, the Magistrate, in order

to aid investigation may order an arrested person to provide the data for the case collection. While in the case of Criminal Procedure (Identification) Act 2022, the data such as a biological sampling may be taken from the arrested person for the offences against a child, women or for the offences where the minimum punishment is imprisonment for seven years, or from a person who has been detained under any preventive detention law. And also, the magistrate may order as seen in Identification of Prisoners Act.

According to Identification of Prisoners Act 1920, Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above were the authorized to collect the data. While in the case of Criminal Procedure (Identification) Act 2022, it increased the number of persons who are eligible to collect data i.e., Officer in charge of a police station, or of rank Head Constable or above, Head Warder of a prison.

In Identification of Prisoners Act 1920, it clearly states that the Magistrate has the power to direct to collect data from the accused or convict but when it comes to the Criminal Procedure (Identification) mentioned that Metropolitan Magistrate, Judicial Magistrate of First Class, Executive Magistrate may also have the power to direct to collect data from the individual as mentioned in the act.

4. RIGHT TO PRIVACY AND CRIMINAL PROCEDURE (IDENTIFICATION) ACT

Even though the Act provides major significant to the investigating agencies, Act also has some major draw backs. When concentrating more on better functioning and efficiency to the aids of investigation, this Act creates certain drawbacks to the concerned matter of equality and privacy. The collection of data and information such as blood samplings, hair samplings, DNA profiling etc. mentioned as examination of data in this act is violating Article 20(3) and Article 21¹¹ of Indian Constitution. Where the Article 20(3) says about ‘right to self-incrimination.’ Where article the article 21 of Indian Constitution says that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Where the term ‘right to life’ includes right to privacy also. It is believed that right to privacy is considered as the heart of the Indian Constitution. Every human being has the right to have privacy in their life and no one have the right to encroach or disturb their personal space or life. Such can be seen in different decisions made by the judiciary of India.

¹¹ The Constitution of India, 1950

The Act even creates violation to the requirement of UN's charter. The Supreme Court through its various decisions have made a pathway to different aspects of right to privacy. The 2022 Act has opened a door for the modern scientific technology as well as for the efficient functioning of investigation. But at the same time this has a consequent feature over the individuals and also to their personal space which they are entitled to keep it on their hands. The right to privacy is considered as a 'penumbral right' because it is a right which has been declared by the Supreme Court of India as this right has not explicitly termed in the Indian Constitution. The term 'right to privacy' was questioned in *Kharak Singh v. State of UP*¹², where the SC mentioned that "the right to personal liberty takes in not only a right to be free from restrictions placed on his movements but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security." Here in this case, it is clearly says personal liberty also means that free from encroachment on one's private life where the private life means his privacy.

In the Supreme Court case, **Charles Sobhraj v. Superintendent Tihar Jail, 1996**¹³, the **Justice Krishna Iyer stated that** "except for the fact that the compulsion to live in a prison requires by its force the lack of certain rights, like the rights to move freely or to practice a profession of one's choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution" from this itself it is clear that even the prisoners are entitled or eligible to the basic freedom in which the purview of right to privacy may include.

Even the Section 4(2) of the Act, it says that the data or measurement to be collected must be collected or preserved for a year of 75 years with the Bureau which is clearly a violation to the aspect of right to be forgotten which was mentioned in the landmark case *S. Puttuswamy v. Union of India*¹⁴. in this case the court observed that data collection and recording such information is intruding and encroaching into the privacy of an individual which is comes under the violation of the fundamental right of right to privacy.

¹² AIR 1963 SC 1295

¹³ AIR 1978 SC 1514,

¹⁴ (2017) 10 SCC 1

The Act violates the right to privacy since it collects the data or measurements or information regarding the individuals such as convicts, accused or anyone for the aid of investigation. Even if the data are provided for the aid of the matter of investigation and also for the effectiveness and better functioning of the investigating authority, still it comes within the purview of the violation of basic fundamental rights which include violation of right to privacy also. Data and information are considered to be the most relevant thing in this present world as the present world is completely depending on technological emergence where these data can be misused and also may create harm to individual's privacy. Therefore, though the Act provide betterment and effectiveness, it creates violation to the right to privacy

With reference to the above-mentioned cases, it is clearly understood that right to privacy is an important right of a human being as privacy is of different aspects. The privacy may include of privacy of individual's information, individual's space etc. Each individual may or may not be ready to share it. And also these data under this Act is collected, stored and also preserved a period of 75 years which is such a long time. The concept of right to privacy has been evolved from different cases and the also from the different perspective of judiciary.

CONCLUSION

The Criminal Procedure (Identification) Act, repealed the Identification of Prisoners Act. The old act was repealed in order to broaden the aspects of collecting the data of accused, convicts, any individuals as prescribed in the new Act. There are a various changes made in the new Act as compared to the old Act. The old Act did not give much broadening to the data to be collected. While in the matter of new Act, it expanded it term of data or information to collected from an individual or an accused or a convict. The data or the measurements to be collected in the new acts are blood sampling, hair sampling, foot prints, finger and palm prints etc. and even the analysis of such, and the act also permits to take the data of behavioural samplings of signature, handwriting etc.

The act even widens the term 'Magistrate'. In the new Act, it mentions that the term Magistrate include metropolitan magistrate for the are of metropolitan and for the other areas it is the First Class Judicial Magistrate and when it comes to the matter of providing security for the good behaviour it is the Executive Magistrate.

Although there has been made such a wide changes, the Act seems to violate the basic concept of fundamental rights. That is everything and everyone in the present world is prone to misuse and to be misused with the personal data. It is the duty of the legislature to keep this in their mind and also to take necessary steps for the safeguard of such information. But in order to provide such safety and safeguards to its own citizen, the legislature has made the Act to collect the data of individuals as mentioned in the act and also collect such data and allow this act to preserve such data in the hand of the Bureau called National Crime Record Bureau. The Act has even given this bureau the right to preserve such data or measurement for a period of 75 years that is the right to be forgotten is also been violated. The bureau is even empowered to handover such data for the aid of investigation. By this we can clearly say that the right to privacy is also being violated. Though the right to privacy has been evolved from different cases and different decisions, it is still considered as the most and essential fundamental right of an individual.

With all these we can say that though the Act provides aid to investigating agency, it is prone to the violation of right to privacy.

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