

Criminal Procedure (Identification) Bill, 2022 : Privacy Concerns

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Introduction

In order to achieve the goal of making the criminal investigation more effective and timely through the use of modern technology, the “ Criminal Procedure (Identification) Bill, 2022”, a newly introduced and almost passed bill came to light in the Parliament. Here, almost passed means that it is passed by both the houses of parliament that are Lok Sabha as well as the Rajya Sabha and is awaiting the assent of the President of India. It was introduced by the Government on 28th March 2022. After the introduction, it was passed in Lok Sabha on 4th April 2022 and a few days after it was passed in the Rajya Sabha on 6th April 2022.

As far as the bill is concerned, the moment the bill is introduced it has been marked by controversies from various groups and sections of the society. Lots of issues have been flagged, and lots of allegations against the government have been put on by these people. So, this bill is seen as slightly controversial. One of the biggest and most important controversies is the privacy concern. Questions regarding privacy concerns and decoding the issues were raised by the different squadrons, the opposition parties and also the civil society activists as well as the other members of the committees. For this, the government defended by saying that the law will modernise policing and help solve crimes swiftly.

Before we delve into understanding the provisions of this bill, and the issues concerned, we also need to study law in the country which already exists.

What was the already existing law?

The Criminal Procedure (Identification) Bill, 2022 is going to replace an already existing law in the country and that law is named " Identification of Prisoner's Act, 1920" or in short the IPA, 1920 which authorises police officers to gather information (fingerprints and footprints) from those who have been convicted or arrested. It is British Indian law and is 102 years old. This law is currently enforced. It has 9 sections.

The already existing law authorises police officers to gather information or measurements (fingerprints and footprints) of those who have been convicted or arrested. For convicted persons, a jail sentence of 1 year with rigorous imprisonment and for arrested too jail sentence of 1 year with rigorous imprisonment.

Section 117, CrPC: In every area, there are some mischievous elements and sometimes the executive magistrates like the DM, and SDM can issue an order and ask mischievous people to give a sort of security, security ensuring good behaviour.

What are the practical difficulties faced before the introduction of the new bill? :

As we all know that everything including a bill also has to face difficulty before its introduction, and so is with the Criminal Procedure (Identification) Bill, 2022. Some of them are :

- Firstly, this bill is based on the recommendations of the 87th Report of the Law Commission of India. This was made in order to have a fresh look at the Act. Also, to revise it and to make it correspond with the modern

trends in criminal investigation.

- An amendment to the Identification of Prisoners Act, 1920 was also prescribed by the Supreme Court in the judgment of the State of U.P. vs Ram Babu Misra (1980) which held that in the absence of any specific provision, the Magistrate could not direct the accused person to give his specimen signatures and writing samples.

What is the Criminal Procedure (Identification) Bill, 2022?

One of the key features of Bill is the expansion of the term 'measurement'. According to Clause 2(1)(b) of the Bill, the term will include "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."

In short, this bill proposes allowing police to gather fingerprints, palm prints, footprints, pictures, iris and retina scans, as well as physical and biological samples. The measurements must be kept for a period of 75 years from the time they were taken.

In this bill, The National Crime Records Bureau (NCRB) will be the central agency in charge of keeping track of the records. The data would be deleted only after a person arrested for an offence is acquitted or discharged.

The Expert Committee on Reforms of the Criminal Justice System (Chair: Dr Justice V. S. Malimath) recommended in March 2003 that the 1920 Act be amended to allow the magistrate to authorise the collection of data such as blood samples for DNA, hair, saliva and semen.

It further states that resisting the taking of measurements is a crime under Section 186 of the Indian Penal Code

(obstructing a public official), punishable by a three-month jail sentence, a fine of up to Rs 500, or both.

Who Shall Collect The Measurements?

According to Clause 3 of the new Bill, a police officer or a prison officer has been empowered to collect measurements. Moreover, a police officer has been defined as an officer in charge of a police station or an officer not below the rank of head constable. Further, the term prison officer means an officer not below the rank of the head warder.

Whose Measurements May Be Collected?:

Clause 3 of the new Bill provides for persons whose measurements may be collected. In simple terms, the scope of persons whose measurements may be collected has been expanded to a great extent under this Bill. As per Clause 3 of the Bill, measurements of the following persons may be collected:

- Any person convicted of an offence.
- Any person ordered to give security for his good behaviour or maintaining peace under section 117 Cr. P.C for a proceeding under section 107 or section 108 or section 109 or section 110.
- Any person arrested with respect to an offence is punishable by any law.
- Any person detained under the preventive detention law.

How Is The 2022 Bill Different From The Identification Of Prisoners Act, 1920?

- As per the 1920 Act, fingerprints, footprint impressions, and photographs could have been collected. However, as per the 2022 Bill, the scope of the term measurements has been expanded and now includes biological samples and behavioural attributes too can be collected.
- According to the 2022 Bill, measurements of a person who

is convicted or arrested for any offence may be taken, the exceptions have already been discussed above.

- This 2022 Bill adds the persons detained under any preventive detention law whose measurements may now be taken while according to the previous Act, only an Investigating Officer, Officer in charge of Police Station or Officer not below the Rank of Sub Inspector were empowered to collect measurements.
- This 2022 Bill also provides that the measurements may be collected by an officer in charge of a Police Station or any officer not below the rank of Head Constable and it also adds a category of prison officers not below the Rank of the head warder who may also collect measurements.

What are privacy concerns or issues with the bill?

- Many activists say that the Bill was beyond the legislative competence of Parliament as it violated the fundamental rights of citizens including the right to privacy case that is Justice Puttaswamy (Retd.) and Anr. vs Union of India and Ors case as this Bill proposes to collect samples even from protestors engaged in political protests.
- This bill also violates Article 20 (3) of the Constitution. The Bill implied the use of force in a collection of biological information, could also lead to narco analysis and brain mapping.

Article 20(3): 'No person accused of an offence shall be compelled to be a witness against himself.'

- Also, it violates human rights provisions as laid out in the United Nations charter.
- Also, the implied use of force in clause 6(1) to take measurements violates the rights of prisoners laid down in a catena of Supreme Court judgements beginning with A K Gopalan (1950), Kharak Singh (1964), Charles Sobhraj

- (1978), Sheela Barse (1983), Pramod Kumar Saxena (2008).
- Facial recognition technology and its use by governments or authorities are a concern across the world.
 - For example, during the pro-democracy protests in Hong Kong, the Chinese government deployed a tracking system using facial recognition technology to capture demonstrators. Because of this, protesters were seen wearing masks, covering themselves using umbrellas, avoiding public transport that needed ID proof and also in many cases, spray-painted CCTV cameras.
 - The new proposed bill, which also provides for retaining the people's measurements for 75 years from the date of collection, was in "violation of the Right to be Forgotten enshrined in the Right to Life under Article 21 of the Constitution".

Conclusion

Last but not the least, it can be concluded that strong data protection law, with stringent punishment for breach of the data, there should be parliament scrutiny, better implementation of this new bill, there is also the need to have more experts to collect measurements from the scene of crime, more forensic labs, and equipment to analyse them to identify possible accused involved in a criminal case and also there should be the training of the investigation officers, prosecutors, judicial officers and collaboration with doctors and forensic experts need to be prioritised too.