POTENTIALITY OF THE NEW CRIMINAL IDENTIFICATION ACT, 2022 IN ESTABLISHING A SYSTEM OF VIGILANCE

Nandini Chhabra, LLM, Galgotias University, Greater Noida

ABSTRACT

The Criminal Procedure (Identification) Act, 2022, establishes legal sanction for taking the necessary body measurements of individuals who are obligated to provide such measurements, which will improve the speed and efficiency of criminal investigations as well as the likelihood that criminals will be found guilty. The Identification of Prisoners Act, 1920, which was in existence for 102 years, is replaced by the Criminal Procedure (Identification) Act, 2022. The law allows for the collection, storage, and analysis of physical and biological samples, including scans of the iris and retina of guilty individuals, by law enforcement agency including magistrates and prison staff. The Act expands the definition of "measurements," the data that may be gathered includes fingerprints, palm prints, footprints, photographs, physical samples. The Act specifies that prison personnel not below the position of head warder may collect measures, in addition to stating that any officer not below the rank of head constable or the official in charge of the police station may also do so. The objective behind the study is to analyse the legal provisions infringing the rights of accused under Article 20(3) of the Constitution of India in the light of various judgments. The research is proposed on doctrinal research and aims to a theoretical analysis of the Criminal Procedure (Identification) Act, 2022 vis a vis the right against self-incrimination. The research has been made on a doctrinal model of research based on comparative analysis and critical examination of secondary sources such as a journals, articles, books etc. The research will determine if the Instant Act will excessively empower the judiciary and police system in the process of collecting evidences.

INTRODUCTION

The state's ability to monitor its population has increased as a result of technological advancement. On March 28, 2022, the Criminal Procedure (Identification) Act of 2022 (hereinafter referred as 'the Instant Act') was introduced in the Lok Sabha. The Identification of Prisoners Act of 1920 was abolished by the Act[1], which allowed for the gathering of personally identifiable information about some individuals, such as criminals, in order to carry out criminal investigations. The Identification of Prisoners Act, 1920, whose alteration was proposed in by the 87th Law Commission of India, 1980, is to be replaced by the proposed legislation as well as through the judgment ***State of U.P. vs Ram Babu Misra.***[2] The Instant Act is created with the intention of allowing, among other things, the identification and interrogation in criminal situations, measuring detainees and other individuals. The number of people who can access this information has increased thanks to this Act.

It authorises the National Crime Records Bureau to gather, protect, and maintain specific records. It must have been introduced to make it possible to measure the body precisely with modern technology. The Act's definition of "measurements" encompasses fingerprints, palm prints, footprints, photographs, physical biological samples, retina and iris scans, and its analysis. The Act of 1920 made it feasible to take action against those who were imprisoned for one year or more, were being held on charges that carried that kind of term, and thirdly, were in possession of a bond for good behaviour and peace. But, the Instant Act covers each convicted individuals as well as anyone held under any applicable statute or arrested under any preventive detention law. The instant Act in regard is also aimed at enhancing the minimum punishment of 1 year to 7 years.

HISTORICAL BACKGROUND

The Identification of Prisoners Act was passed in 1920 by the British colonial administration. In fact, the colonial government attempted to bolster its control by expanding the scope of vigilance through the I.P. Act, which was put into place soon after Gandhi's non-cooperation agitation during a roiling wave of nationalism. It gave law enforcement agencies the authority to take and keep images, prints, and fingerprints of indicted and non-indicted people (only under certain conditions), and it created rules for their preservation and destruction.

[1] The Criminal Procedure (Identification) Act, 2022 (Act No. 11 OF 2022)
[2] (1980) 2 SCC 343

A century later, the government of independent India replaced the I.P. Act, which had a narrow scope, with ambiguously written legislation that goes to great lengths to collect more sensitive personal data and provides less protections than the colonial law.

The phrase "measurements," as used in the aforementioned Act, only authorised the taking of photographs on the Magistrate's order as well as the fingerprints and footprints of a select group of both convicted and innocent people.

In the 1980s, the Supreme Court in its decision in the *State of U.P. v. Ram Babu Misra*[3] and the 87th Report of the Law Commission of India ordered changes to the existing laws of that time. The 1920 Act faced opposition and needed to be modified, primarily because of its limited definition of "measurements." As a result, one of the main objectives of the 2022 legislation seems to be to address this problem.

The Criminal Procedure (Identification) Act, 2022 states that its purpose is to modernise the law in order to account for the most recent identification and measurement methods that have emerged over the past century, particularly in developed countries, which produce highly trustworthy and reliable results that are recognised globally. The Instant Act of 2022 enables quicker and more effective criminal investigations, increasing the likelihood of conviction.

The kinds of information that may be gathered, the people through whom such information may be taken, and the organisations that may give such authorizations are all expanded by the Act. It also requires that data be maintained in a centralised database. A government employee's ability to carry out his duties will be hindered by his resistance or refusal to provide information or data, according to Section 6(2) of the 2022 Act.

The law allows for the collection, storage, and analysis of physical and biological samples, including scans of the iris and retina of guilty individuals, by law enforcement and prison staff. The Act mandates that measuring records be retained for 75 years following the date of collection. Individuals are free to decline providing their biological samples if they have not been found guilty of or arrested for crimes against women, minors, or those who are otherwise subject to sentences of less than seven years. The agency in charge of maintaining the data will be the National Crime Records Bureau (NCRB).

[3] *Supra* Note 3, at Page 1

A medical examination of an accused person was not previously allowed under the Code of Criminal Procedure, 1898. During this time, India started to develop its laws of identity. The "physical examination of an apprehended individual" was identified by The Law Commission of India in its 41st Report in 1969 as a requirement for a successful investigation in the absence of a violation of Article 20(3).[4] When Section 53 of the CrPC[5] was amended to add an explanation of the term "examination," this proposal from the 41st Law Commission Report was also inserted. Similar to that, Section 311(A) was added to establish a clause requiring specimen handwriting or signatures during an investigation.

ARTICLE 20(3)

The "right to silence" is a common law principle that states that parties or prosecutors shouldn't typically invite or encourage courts or tribunals of fact to assume that a suspect or an accused is guilty simply because he has declined to answer questions from the police or the Court.

The Law Commission in its Report[6] had taken up an accused person's right to remain silent and Article 20(3) of the Indian Constitution on its own initiative in light of the developments in the UK and other nations that have weakened the accused's right to remain silent during questioning and during criminal trial proceedings. Clause (3) of Article 20 of the Indian Constitution includes the right against self-incrimination. There was no need to amend the statute governing the accused's right to remain silent. A fair, just, and equitable process must be followed in criminal trials, according to Article 21 of the Indian Constitution, which was established following *Maneka Gandhi v. Union of India*[7]. The "right to silence" is analysed and compared based on English and European Court judgments and the current legal climate in many nations, including the United States, Australia, Canada, the United Kingdom, and China. Articles 20 (3) and 21 of the Constitution, as well as Sections 161 (2), 313 (3), and 315 of the 1973 Code of Criminal Procedure, preserves this freedom. If the modifications made in the UK or those suggested in Australia were implemented in India, those modifications will be in violation of Articles 20 (3) and 21 of the Indian Constitution. Therefore, it was urged that the present right to quiet not be diminished and cannot be diminished.

[4] The Constitution of India
[5] The Code of Criminal Procedure, 1973 (Act No. 2 OF 1974)
[6] Law Commission of India, "180th Report pertaining to Article 20(3) of the Constitution of India and the right to silence (May,2002)
[7] 1978 (1) SCC 248

The right to self-incrimination is protected by Article 20(3), which states that a criminally convicted person cannot be made to testify against himself. *Black Laws* Dictionary defines self-incrimination as a declaration or an action that takes place during an investigation in which a person or witness implicates themselves either openly or tacitly. The Law Commission had examined, without violating Article 20(3), the need for a physical examination of the arrested person as part of its 41st Report.[8]

The privilege provided by this Article is only available to those who have been charged with a crime; subsequent accusers are not eligible. The Supreme Court ruled in *M.P. Sharma V. Satish Chandra*[9] that an accused person whose name is on the FIR may only use this right in accordance with Article 20 (3). It was noted that the privilege against self-incrimination may be invoked both during the course of the trial and before it, meaning that anyone who is suspected of being an accused during the course of an investigation may do so even if his name is not included in the FIR.

In a case [10], the Supreme Court stated that a compulsion must be shown necessarily. In other words, the court states that it has to apparent that the person giving the statement was compelled to make the same as to incriminate himself. In this case, the court further declared that under Article 20(3) of the Constitution, an individual who provides the investigating officer a specimen of his handwriting, signature, or an imprint of his thumb, finger, palm, or foot does not count as a witness. According to the ruling, it must be proven beyond a reasonable doubt that the witness was forced to give a statement that would implicate him.

In *Nandini Satpati v. P.L. Dani*[11], a three-judge bench of the Indian Supreme Court reviewed the right to remain silent. The court upheld earlier English law and the Miranda decision of the American Supreme Court. According to Krishna Iyer J, the accused has the right to remain silent and refuse to provide any information if it would implicate him in a crime. Both prior to and during the trial, this protection was available.

Similar rulings have held that acquiring a sample of blood, hair, or voice for a DNA test does not amount to compelling a suspect to testify against themselves since such evidence are harmless by themselves and cannot disclose anything that the accused personally knows. The

[8] Law Commission of India, "41st Report pertaining to the Code of Criminal Procedure, 1898 (September,1969)
[9] 1954 AIR 300
[10] *State of Bombay V. Kathi Kalu Oghad,* 1961 AIR 1808
[11] 1978(2) SCC 424

legality of collecting biological specimens or other measurements to assist in an inquiry has so long been acknowledged. According to the Supreme Court's ruling in *Selvi v. State of Karnataka*[12] , the only exclusions to Article 20(3)'s prohibition against the use of scientific methods without agreement are narcoanalysis, polygraphs, and brain fingerprinting.

THE INFLUENCE OF THE NEW ACT ON THE RIGHT TO SELF INCRIMINATION

The Act permits police officers to take measures forcibly from suspects, prisoners, detainees, arrestees, and anybody else who may just be suspected of being involved without any evidence to support that suspicion. The term "measurements" has been updated to encompass "biological samples," "analysis," and "behavioural traits," all of which may be collected against one's will in the event of resistance or defiance. If properly interpreted, measurements obtained through compelled psychiatric evaluation may be of a testimonial nature. When such an assessment turns into an admission that implicates another person, a testimony need is established. Therefore, this coercive clause violates the Article 20(3) mandated right against self-incrimination, a long-standing tenet of our criminal justice system.

Measurements under Section 2 of the Instant Act 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, CrPC.” It is germane to note that ‘behavioural attributes’ does not form part of forensic science, and therefore leads to concerns about its wide, vague scope. And therefore, these behavioural attributes if interpretated would fall under the measurement of testimonial nature. By using a coerced psychiatric evaluation, for instance, "behavioural characteristics" as measurements may be coercively taken from a person. Such an assessment would be considered a "testimonial compulsion" if it results in any incriminating admissions.

The phrase "behavioural attributes" can be interpreted in a variety of ways because it could refer to procedures like brain mapping, polygraph exams, or narco-analysis that the Supreme Court specifically forbade in its decision in the Selvi Case[13]. This interpretation can further be upheld by the fact that the provision under the act is phrased as a closed definition. The Supreme Court has, in multiple judgments, held that the closed definitions are to be liberally

[12] 2010(7) SCC 263
[13] *Supra* Note 13, at Page 5

interpreted by enlarging and adding simple meanings to the terms, especially in cases where the extended statutory meaning may not fall within the natural meaning. Therefore, 'behavioural attributes' may be interpreted as including both its simple meaning, as well as handwriting, signatures and other measurements mentioned in Sections 53, 53A of CrPC.

Hence, it is apparent from the above observations that the Instant Act is contrary to the Article 20 (3) as the police officers under proviso to Section 3 are permitted to take "forcibly" the measurements from the convicts, arrestees, detainees, under trials or from the persons who are merely suspected to be involved in the offence even if the person under Section 6 refuses or resists to give the same, which clearly suggests the infringement of the fundamental right against the self-incrimination.

Secondly, the definition of measurements under the Instant Act includes 'biological samples', their 'analysis' and 'behavioural attributes', which if interpreted may potentially include brain mapping, polygraph tests, or narco-analysis. And if such measurements i.e. behavioural attributes are collected through the compulsion or by the force against the consent of the person and if the same leads to the incriminatory admission it will be against the principles of Constitution enshrined under Section 20(3).

The Act also grants authorities to the police, prison officers, and judges an unreasonably broad range of authority to force people to submit to the actions being implemented. Such discretionary and unregulated authority raises concerns regarding possible use of these powers. This Act is an example of the expansion of powers to give a tough hand to law enforcement agencies for the identification and prosecution of crime. However, in a democracy, expansion of power must be accompanied by augmentation of safeguards for protecting the rights of the citizens. This Act sought to include 'biological samples' in the definition of measurements. At the same time, it is unclear whether it includes DNA, polygraph test, narco-analysis, etc., which, until now, could not be extracted from a person without his consent and free will. However, under the provisions (Sections 5 and 6, specifically) of this Act, a person may now be compelled to provide such measurements to law enforcement agencies. The refusal to give the same will attract penal provisions against the accused. Such forcible seizure of a person's sensitive data amounts to 'testimonial compulsion', which is in violation of a person's fundamental right against self-incrimination under Article 20(3) of the constitution.

Due to the fact that this legislation has expanded the group of people whose measurements may be taken for "any offence" committed in violation of "any law," even someone who is charged with a minor offence carrying a maximum one-month sentence may be required to provide his measurement to authorities in law enforcement.

Prior to this, only officers with the level of sub-inspector of police or higher were permitted to take measures under the 1920 Act. However, the new legislation modifies this clause to allow measures to be taken even by police officers and prison guards not below the ranks of chief constable and head warden, respectively.

The Act will, in reality, permit police personnel of lower ranks to openly exercise their coercive powers without providing necessary safeguards to the suspected criminals while knowing about the frequency of custodial violence in the nation.

Because even someone involved in minor offences may now be required to disclose its measurements, it raises concerns about the authorities abusing their authority. Article 21 of the constitution, which is enshrined in defending a person's bodily integrity and dignity, is violated by this.

This Act violates a person's right to privacy, which is guaranteed by Article 21 of the constitution and was affirmed in the *Puttaswamy*[14] decision, because it requires the forcible seizure of a person's measurements, which is contrary to the spirit of the constitutional safeguard provided by this provision.

CONCLUSION

Due to a dearth of evidence and a poor conviction rate, prosecution does in fact cease in many instances. It has become imperative to update the processes for investigating and identifying criminals that were outlined in earlier legislation as a result of the development of new technology.

The lack of clarity surrounding the pre-charge detention time while the scientific inquiry is ongoing is one of the main concerns with this legislation. Although the Act's declared goal is to speed up investigations, this goal is illusory in the absence of a clause that governs how long people can be detained while an investigation is underway.

[14] (2019) 1 SCC 1

Although the intent of this Act is to encourage the use of contemporary technologies to speed up the criminal justice system's investigation process, it neglects to take into account that the unrestricted authority conferred to agencies of law enforcement under this Act is susceptible to abuse, especially given that the nation currently appears to lack any efficacious data protection laws.

If the Act is to be effective in streamlining investigations, it must also establish a deadline after which a person cannot be held without being prosecuted. The answer to this conundrum would be to either charge the person shortly after the sample was collected or to release them and carry out a separate scientific examination.

Under Section 3 of the Act, measurements may only be taken by police officials with a minimum rank of Head Constable and prison officers with a minimum rank of Head Warder. These authorities, however, would lack the education, expertise, and credentials necessary to gather the broad variety of measurements required by Section 2(1)(b) of the Act. It is important to note that under the existing investigating structure of the CrPC, only Investigative officers (IOs), often with the level of sub-inspector or inspector, are allowed to acquire evidence. A police officer with at least the sub-inspector rank may take action, according to the 1920 Act. By expanding the number of organizations who are entitled to take measures, the Act requires expansion of the training courses for acquiring such evidence. Even the present IO training courses are inadequate, sporadic, and use substandard techniques for controlling scene of the crime and obtaining evidence. Therefore, implementing fresh training courses with a more intense concentration will be challenging. On the contrary hand, prison officers aren't even given this kind of instruction. In the lack of any training rules, it is unclear who will lead the training and exactly how it will be conducted.

Furthermore, adequate safeguards must be brought into this statute to prevent blatant misuse of the provisions of this Act. Currently, the Act lacks adequate safeguards and the safeguards like the one appended to Section 3 of the Act are poorly drafted, which may lead to confusion in its execution, and a whole new set of litigation concerning this will overflow into courts across the country.

There is significant scope for amending this legislation to make it more justice-oriented, devoid of any apprehension attached to it, to meet its objective of robust investigation for the identification and prosecution of criminals.

The Indian data protection mechanism is in the developing stage, with no particular law catering to it available. Considering the size of the data of its populace, India requires a robust and extraordinary data protection mechanism governed holistically by a statute which will provide protection to people's sensitive data from leakages.

At the same time, such a data protection mechanism will assist the government in using that data safely to serve justice expediently. The Criminal Procedure (Identification) Act, 2022 seeks to collect deeply sensitive data. Therefore, for its protection from misuse, it is necessary to have a matured data protection infrastructure and adequate laws at work to govern the same.