
EXPLORATION OF LEGAL ASPECT IN THE CRIMINAL PROCEDURE IDENTIFICATION BILL: INFRINGEMENT OF RIGHTS

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ABSTRACT

The **Criminal Procedure Identification Bill** (CPI) looks to refresh a British-time regulation to empower police to gather tests of an individual's biometric subtleties, for example, fingerprints and iris examines, assuming they have been captured, confined, or put under preventive detainment on charges that draw in a prison term of seven years or more.

Resistance ideological groups have marked the proposed regulation as draconian and raised worries about information breaks and **infringement of privacy**. If the information is dispersed or spilled inside the public authority or past, the individual might endure long-haul side-effects from the public authority, yet from different entertainers who have acquired this delicate and important information. In addition to such advancements in technological approach and enhancement in the scope of data collection, this bill has raised multiple questions on the control and supervisory mechanism of the state about the same. Also, it is widely believed that this bill would entitle a lot of uncontrolled power in the hands of the police department that will be detrimental to the state. Though some sort of **constitutional approach** has been emphasized by the government all the efforts regarding the same might go in vain owing to its improper arrangement and lack of historical data.

Moreover, the officials additionally dread unfriendly ramifications for basic liberties and have required the bill to allude to a parliamentary standing panel or a select council for point-by-point considerations.

Keywords: Criminal Procedure Identification Bill, infringement of privacy, constitutional approach

INTRODUCTION

The **Criminal Procedure (Identification) Bill, 2022** seeks to amend a British-era law to enable police to collect samples of a person's biometric details, such as fingerprints, retina and iris scans, and behavioral attributes including signature or handwriting, if they have been arrested, detained, accused or placed under preventive detention on charges that attract a jail term of seven years or more. The Bill seeks to replace the Identification of Prisoners Act, 1920 but continues to interact with provisions of the Code of Criminal Procedure, 1973 which still occupy the field. The Bill will likewise interact with the DNA Technology (Use and Application) Regulation Bill, 2019 if both are passed as Acts. Identification of Prisoners Act authorizes officers in charge of a police station, or of rank Head Constable or above, or a Head Warder of prison to gather information from those who have been convicted or arrested. Biometric innovation is viewed as a precise, effective, and reliable way for impeccably recognizable proof and verification of an individual resulting from the steadily advancing world. The Bill ensures a more efficient and expeditious investigation of the crime by the use of modern technology and aims to authorize for taking measurements of convicts and other persons involved for identification and investigation in criminal matters and to preserve records for up to 75 years. The Criminal Procedure (Identification) Bill, 2022 seeks to collect what it terms 'measurements' from certain classes of persons and further also allows for its processing, storage, preservation, dissemination, and destruction, with the stated aim of identification and investigation in criminal matters and of prevention of crimes.

SIGNIFICANCE OF THE BILL

The Bill increases the scope as it expands on the type of data that may be collected from convicted persons, the person from whom data may be collected, and the authority that may authorize such collection. It likewise accommodates the information to be stored in a central database. Under the 1920 Act and the 2022 Bill, resistance or refusal to give data will be considered an offense to obstruct a public servant from doing his duty. The draft law also empowers the National Crime Records Bureau (NCRB) to collect, store and preserve these records for 75 years and share them with other agencies.¹

¹ See Statement of Objects and Reasons, Criminal Procedure (Identification) Bill, 2022; see Cl. 4, Criminal Procedure (Identification) Bill, 2022.

The bill largely covers two aspects regarding whose information might be gathered and by whom. The Bill expands the set of persons whose data may be collected. It includes persons who are involved in any crime, accused of a crime, or arrested for any offense. Earlier, it includes persons Convicted for any offenses punishable with imprisonment of one year or more, but now the bill allows for taking samples from any person Convicted or arrested for any offense. However, biological samples are compulsorily required from the persons arrested for offenses against a woman or a child, or if the offense carries imprisonment for a minimum of seven years.²

Under the CPI bill, police officers and prison officers are responsible for taking samples. In case of an expected individual to give estimations under the Bill declines to do along these lines, makes it legitimate for a police or jail official to constrain the giving of estimations in a way that might be recommended by Rules. Also, such refusal to give measurement under the bill will be regarded as a culpable offense under Section 186 of the Indian Penal Code, 1860. The Bill allows police/prison officers and Magistrates to assess whether taking measurements is 'required' or 'expedient'.

CONSTITUTIONAL LAW PERSPECTIVES

An administrative and logical assessment of the Bill demonstrates grave established infringement as it misses the mark regarding the right to equality (given by Article 14), the right against self-incrimination (given by Article 20(3)), and the right to privacy (given by Article 21) of the Constitution of India.

The Bill warrants significant concern over excessive delegation of power to different functionaries and specialists under the Bill, including jail officials and the police. An unreasonable classification is also created by the Bill between classes of persons who may and may not be compelled to give their sensitive personal information. Further, numerous other provisions fail to lay down any principle that may justify this classification presenting arbitrariness.

Including data collection related to behavioral traits violates the right against self-incrimination as such collection can constitute measurements amounting to a testimonial nature. Coercive

² Cl. 2(1)(b), Criminal Procedure (Identification) Bill, 2022

collection of such samples solidifies the violation of Article 20(3).

VIOLATION OF THE RIGHT TO PRIVACY

At the point when an individual is recognizable from the information that is gathered, then, at that point, there is a violation of the right to privacy³. Recognizable data implies individual personal and sensitive information which is safeguarded under the right to privacy which is a fundamental right by the Supreme Court of India. Bill may violate the fundamental right to privacy, as was laid down in the case of K.S. Puttaswamy and Another v. Union of India and Others⁴, the supreme court held that individual information can be gotten given a substantial nexus can be demonstrated between the objective and method for getting the information, and assuming no other suitable option is accessible.

In its ongoing structure, the regulation doesn't take into consideration such a limitation as the Supreme Court has forced. Therefore, it neglects to breeze through the Puttuswamy assessment, and thus might be unconstitutional.

Privacy concerns are being raised over the Criminal Procedure (Identification) Bill, as it offers law enforcement authorities the power to gather biometric data. A 9-judge bench of the Supreme Court in its decision in Puttaswamy-I conclusively established the right to privacy as a fundamental right protected under Article 21 of the Indian Constitution.⁵The 5-judge bench in Puttaswamy-II, while ruling on the constitutionality of the Aadhaar framework, further reiterated the inclusion of informational privacy (including biometric and other personal data) within the right to privacy under Article 21.37 Retention of data which constitutes private information, amounts to an interference with the right to privacy.

The bill tends to provide the authorities with far too much personal information as it empowers any police officer above the post of Head Constable to collect body measurements such as blood samples, hair, semen, etc. This is problematic considering that police tend to misuse the provisions of law and powers vested in it by various penal statutes. Activists claim the law violates India's Constitution, which guarantees citizens the right to privacy. This prima facie seems to be against the spirit of democracy.

³ INDIA CONST. art. 21

⁴ K.S. Puttaswamy and Another v. Union of India and Others, AIR 2017 SC 4161

⁵ KS Puttaswamy v. Union of India (2017) 10 SCC 1 [65].

The legislative proposal undermines the right to privacy of not only persons convicted or arrested for a crime but also of the citizen. In conclusion, the Bill impacts the right to privacy of an individual excessively, and for this, and the reasons expressed above, infringes Article 21 of the Constitution.

VIOLATION OF THE RIGHT TO EQUALITY

The Bill presents a grave infringement of the right to equality under Article 14 of the Constitution⁶. It may also fail Article 14 requirements of the law to be fair and reasonable, and for equality under the law. The Bill delegates exorbitant powers to the chief in the following way: first, by giving the executive wide rule-making abilities with next to no direction, and second, by enabling functionaries, for example, the police and jail officials to conclude whom they might constrain to give measurements. A police or jail official can legally accept estimations in the way endorsed by the Rules assuming the individual rejects or opposes making such estimations. Further, such opposition or refusal to permit taking such estimations will comprise an offense under Section 186 (hindering local officials in the release of public elements) of the Indian Penal Code, 1860. Taking such estimations is completely the circumspection of the police, jail official, or Magistrate.

In the *In re The Delhi Laws Act, 1912 (1951)*⁷ case, the Supreme Court held that the law-making body can't give up its legislative functions, and keeping in mind that it is designating its powers, it should cease executive a parallel legislature. In *Subramanian Swamy v. Union of India*, it was further observed that in addition to excessive delegation of legislative powers, the conferment of authority to pass administrative orders would be violative of Article 14 of the Constitution, if "such conferment is without any guidance, control or checks. The ability to sort out the subtleties can be designated to the executive yet for it to work inside its cutoff points, guidelines must be laid out by setting out a broad policy. It is basic that the actual Bill endorses a limit to the powers conceded to the executive and the functionaries, or demonstrates a broad perimeter inside which these powers will be worked out. In its absence, the Bill is ultra vires the Constitution.

The ongoing draft of the Bill presents an intense infringement of the right to equity, safeguarded under Article 14 of the Constitution. The Bill unreasonably designates regulative power to the

⁶ INDIA CONST. art. 14

⁷ *In re The Delhi Laws Act, 1912*, AIR 1951 SC 332

chief in a way that falls foul of the Constitution, awards unreasonable optional powers to functionaries, is clearly inconsistent, and fails the test of reasonable classification. The bill gives essentially no direction on the cycle and conditions under which the powers to force the taking of measurements are to be practiced by police or jail officials and Judges. The way of taking such estimations is to be endorsed by Rules outlined by the Focal or State legislatures as samples are to be taken by police or jail officials, willingly or on the request of a Justice.⁸

VIOLATION OF RIGHT AGAINST SELF INCRIMINATION

The right against self-incrimination⁹ gives protection against police torment. Record-keeping as mandated by the Bill violates this right. 'Measurements,' as defined in the Bill, and particularly the term 'behavioral attributes', can be deciphered to be of a testimonial nature. 'Behavioral attributes' might be interpreted to mean its conventional significance including signatures, handwriting, and some other measurements as expressed under Sections 53 and 53A of the **Code of Criminal Procedure, 1973**. Justice VR Krishna Iyer once portrayed this right as "a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station." This fundamental right doesn't just safeguard people formally charged, yet suspects. In High Court's decision in *Selvi v. Territory of Karnataka*¹⁰, a broad interpretation of 'behavioral attributes' might try and actually be perceived to incorporate narco-examination, polygraph tests, or mind planning were prohibited.

IS CONSENT REQUIRED FOR THE COLLECTION OF SAMPLES? CAN THE SAMPLES BE DESTROYED OR REMOVED?

The bill raises concerns about the consent from the accused for the collection of the samples and also about the removal and eradication of the samples collected. Code of Criminal Procedure, 1971 and Identification of Prisoners Act, 1920 allow the central and state government officials are allowed to take measurements with or without consent i.e., for the collection of samples Consent is not required.

⁸ See Cl. 3, Criminal Procedure (Identification) Bill 2022

⁹ INDIA CONST. art. 15.

¹⁰ *Selvi v. State of Karnataka* (2010) 7 SCC 263.

Under Sections 53, 53A, 54, and 311A CrPC ¹¹ don't grant examining organizations to store the gathered samples of individuals beyond the specific time of the investigation. As a matter of practice, after the trial is finished and the decision is given by the court, criminal courts pass orders to annihilate the gathered measurements.

The DNA Technology (Use and Application) Regulation Bill, 2019 ¹²states that consent is required from the accused with the exception of those captured comparable to offenses deserving of death or offenses over 7 years. Bill accommodates the removal of data of a suspect in the wake of filing of the police report and an undertrial according to the request for the court. Further, an individual, who isn't a guilty party, suspect, or undertrial, may send a composed solicitation to the National DNA data bank for the expulsion of their data, and if there should be an occurrence of minors or crippled people, a guardian might send such a solicitation.

Identification of Prisoners Act, 1920 Act provides for the destruction of records of measurements and photographs of persons released without trial, discharged, or acquitted; excluding those previously convicted of an offense punishable with rigorous punishment for a term of one year or more. Under the present framework, there is no provision to maintain a database of measurements.¹³

LACK OF DATA PROTECTION IN INDIA

This change in power is especially disturbing in the Indian setting, where there is an absence of strong information security and protection and privacy structures. India is still being developed, with new guidelines promising to justify information security. In any case, those forward-looking assurances will be limited consolidation to those whose biometrics might have proactively been shared extensively between government offices, as the CPI Bill permits. Nor does the bill incorporate different governing rules, for example, legal or administrative endorsement or digital information trails. Information may also be used for other unlawful purposes, for example, political, and business purposes without anyone's assent. Also, the Police and other officers responsible for collecting data may misuse the information to disturb specific individuals. Certain individuals may likewise be disturbed or harassed.

It is important to give a system to guarantee the uprightness of estimations gathered for the

¹¹ Code of Criminal Procedure, 1971, §53, 53A, 54, 311A, ACT NO. 2, Acts of Parliament, 1974 (India).

¹² DNA Technology (Use and Application) Regulation Bill, 2019

proposed information base. A significant concern is a way that States have created a wide scope of norms for an assortment of proof and evidence within their respective jurisdictions. While the databases themselves may be administered and maintained by the NCRB, decisions regarding the quality of measurements collected for the database must be guided by forensic experts. The NCRB should follow standardized protocols based on scientific best practices to ensure uniformity across measurements. An insurmountable challenge is a broad scope of 'measurements'. Since several types of measurements are sought to be collected, developing standards for each of them, which are universally accepted, will be a difficult task.

The quality of measurement data collected by the officials and storage of records of measurements as part of the database needs specific clearness. The Bill also lacks clarity on how measurements are to be processed with relevant crime and criminal records. However, there is no proper justification present regarding how the records can be shared and disseminated with law enforcement agencies. the existence of such a database becomes unnecessary when there is a Lack of regulation and oversight over the functioning of the database.

Comparison of Present Bill With the DNA Technology (Use and Application) Regulation Bill, 2019

The Criminal Procedure (Identification) Act, 2022 is somewhat clear in its approach however leaving certain questions unanswered. The bill comes to be dubious and more extensive in its degree as it takes a subtle approach with specific things of the specialists. Regardless of the refusal of concerned individuals, the bill permits officials to collect and gather the samples and increase the ambit of individuals whose samples can be acquired. thus the bill attracts civil protest among the people. With the lack of the proper system to protect the samples taken of the individuals, particularly considering the absence of clearness with regards to how the organization plans to prevent any maltreatment of the gathered data, the bill is broadly argued to be a violation of the fundamental right to privacy under article 21.

The bill allows Prison officers of rank Head Warder and above and police officers of rank head constable and above to take estimation but does the mention about the qualification and

¹³ It may be noted that the Central and State Finger Print Bureaus maintain fingerprint databases for comparison and analysis. These databases are governed by separate regulatory mechanisms.

capabilities in gathering the wide scope of estimations¹⁴

Comparison of Present Bill With the DNA Technology (Use and Application) Regulation Bill, 2019

As of now in India, the DNA Technology (Use and Application) Regulation Bill, 2019 ('DNA Bill') is additionally being viewed as by the Parliament. One of the points as characterized under this Bill, involves the making of DNA databanks for analytical purposes. Samples and measurements according to the 2022 Bill would include biological samples and their investigation, in this manner expanding the degree to the formation of a DNA database. Along these lines, regarding DNA profiles, this Bill would overlap in scope with the DNA Bill. This part just looks to analyse the system under the DNA Bill with the current Bill, without taking a situation on the benefits of the DNA Bill.

The DNA bill provide individuals with the opportunities to approach government and public authority for removal of information from the databank. With this DNA bill provide guidelines to the authorities for maintenance and expulsion of information from the databanks. Whereas the present Bill neglects to give any such rule and instead simply enforces a minimum 75 year retention period. Subsequently, it tends to be induced that data of DNA related information of accused will in any case stay on the NCRB information base in any event, when it is eliminated from the DNA databanks.

In conclusion, improving the effectiveness and efficiency of investigations is an important endeavor, Bill's assumption that it can be achieved through the collection of a wide range of measurements and the creation of such extensive databases is far-fetched. The entire exercise of collection, preservation, and storage of the different types of measurements will create greater administrative burdens and may not deliver on promised returns, making the creation of such database(s) unnecessary while also infringing on fundamental rights.

¹⁴ See Cl. 2(1)(b), Criminal Procedure (Identification) Bill 2022