
CRITICAL ANALYSIS OF CRIMINAL PROCEDURE ACT 2022 WITH SPECIFICREFERENCE TO THE FRS GUARANTEED CONSTITUTION OF INDIA

Mahajan B K, Christ (Deemed to be University)

ABSTRACT

The Criminal Procedure Identification Act 2022, which mandates collecting and maintaining biometric and demographic data of all individuals accused of any criminal offence, has raised concerns about its constitutionality. This paper aims to analyse the constitutionality of the act in light of the Indian Constitution's fundamental rights provisions. The research methodology used in this paper is a combination of a doctrinal study of the relevant legal provisions and case law and an empirical study with legal experts and affected individuals. The paper will address

the question of the act's unconstitutionality by examining whether it violates the fundamental rights guaranteed under Articles 14, 20(3), and 21 of the Indian Constitution. The paper argues that the act is unconstitutional as it violates the right to equality guaranteed under Article 14. The act creates arbitrary classifications between individuals accused of criminal offences and violates the principle of non-discrimination. The paper also contends that the act is violative of Article 20(3), which provides protection against self-incrimination. The mandatory collection of biometric and demographic data of individuals accused of criminal offences may lead to self-incrimination, and this violates the constitutional protection provided under Article 20(3).

Furthermore, the paper argues that the act violates the right to privacy and personal liberty guaranteed under Article 21. The collection and maintenance of personal data without adequate safeguards for its protection may infringe upon an individual's right to privacy, which is an essential component of personal liberty. In conclusion, this paper highlights the unconstitutionality of the Criminal Procedure Identification Act 2022 and the potential harm it poses to the fundamental rights of individuals in India. The paper recommends the amendment or repeal of the act to ensure compliance with the Indian Constitution's fundamental rights provisions.

I. The Criminal Procedure (Identification) Act 2022 stands violative of Article 14 of the Indian Constitution.

The Constitution of India guarantees the Right to Equality through Articles 14 to 18. “Equality is one of the magnificent cornerstones of Indian democracy.”¹ The doctrine of equality before the law is a necessary corollary of the Rule of Law, which pervades the Indian Constitution.² Equality is an essential feature of the Constitution of India, and any treatment of equals unequally or unequally as equals will be a violation of the basic structure of the Constitution of India.³ The Supreme Court is empowered to protect the substratum of FRs as the sentinel on the qui vive.⁴ “We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and the equal protection of the laws.”

The Criminal Procedure (Identification) Act 2022 is in violation of Article 14, which protects against arbitrariness, excessive delegation, and unguided discretion.

A) Test of Reasonableness under Article 14

Over time, Art. 14 has evolved into a significant guarantee against any action of the Administration which may be arbitrary, discriminatory, or unequal.⁵

This principle manifests itself in the form of the following propositions:

- (a) A law conferring unguided and unrestricted power on authority is bad, for arbitrary power is discriminatory.
- (b) Art. 14 illegalizes discrimination in the actual exercise of any discretionary power.
- (c) Art. 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment.

In *Laxmi Khandsari v. State of Uttar Pradesh* Supreme Court laid down that Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects,

¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 47.

² *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34.

³ *M.G. Badappanavar v. State of Karnataka*, AIR 2001 SC 260.

⁴ *Rameshwar Prasad (VI) v. Union of India*, (2006) 2 SCC 1.

⁵ *Shrinivasa Rao v. J. Veeraiah*, AIR 1993 SC 929.

and transactions by the Legislature to achieve specific ends. Type to be useful should fulfill the following two tests:

- (1) It should not be arbitrary, artificial, or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped in the class from others left out of it.
- (2) The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.⁶

In the case of “Kruse v. Johnson⁷”, wherein the court laid down a test under which by-laws issued by the legislative delegatory authorities can be proved as unreasonable, wherein the rule or law is unequal, unjust, amounting to bad faith or oppressive impression. In the presentAct, the collection of data by the officers under the government direction without the consent of individuals can be considered it has failed tests as prescribed under the above case.

Under the Criminal Procedure (Identification) Act 2022, only those detained for crimescarrying a seven-year or longer sentence or who committed crimes against women or childrenmay be required to provide their biological samples; however, all detainees may be requiredto give measurements other than biological samples. There is no rationality between this classification and the goal of promoting efficient investigations. Additionally, the person has no option to consent, making it clear that it is arbitrary. The police officer or prison officer also may obtain the measurements of various persons against that person’s consent.

B) Section 3 of the Criminal Procedure (Identification) Act 2022 is violative of Article 14

Section 3⁸ of the Criminal Procedure (Identification) Act 2022 provides measurements of the convicted, imprisoned, and the person in preventive detention to be taken by the authorized authorities. The police or prison officer is given broad unguided discretion to obtain measurements of the persons. The Criminal Procedure (Identification) Act 2022

⁶ Laxmi Khandsari v. State of Uttar Pradesh, AIR 1981 SC 873.

⁷ Kruse v. johnson, [1898] 2 QB 91

⁸ The Criminal Procedure (Identification) Act, 2022, § 3, N NO. 11 OF 2022.

doesn't classify based on the type of offense or any other means to obtain various measurements. A broad discretion has been given to the authorities in getting the measurements is violative of the Art 14⁹ of the constitution.

In *Jyoti Pershad v. UT Delhi*,¹⁰ the court laid down any principle or policy for the exercise of discretion by the executive or the administration in the matter of selection or classification.

The Supreme Court in *Suman Gupta v. State of Jammu & Kashmir*¹¹ held that a powerful reiteration of the principle that uncontrolled and unguided discretionary power is incompatible with Art. 14. It is now considered that noncompliance with the rules of natural justice amounts to arbitrariness, violating Art. 14. In *Pannalal Binjraj v. Union of India*¹² held that it is also necessary to see in whom the discretion is vested. If it is vested in the State Government or top-ranking authorities, and not in minor officials, abuse of power cannot readily be inferred."

The Criminal Procedure (Identification) Act 2022 doesn't provide for the reasonable classification of the measurements taken of the convicts, arrested, and persons in preventive detention based on offenses. The classification based on offenses should be the criteria for taking measurements. The offenses under the Indian Penal Code range from minor to major offense; obtaining the same kind of measurements from all the persons specified in Section 3 of the Criminal Procedure (Identification) Act 2022 is not a reasonable classification, and there is no intelligible differentia also in the obtainment of such measurements under Section 2(b). Thus, due to these reasons, the Criminal Procedure (Identification) Act is violative of Article 14 of the constitution.

C) Section 5 of the Criminal Procedure (Identification) Act 2022 is violative of Article 14

Section 5 of the Criminal Procedure (Identification) Act 2022 allows the Magistrate to direct any person to provide measurements as defined under section 2 of the Act if required to aid in a prevailing investigation as per the discretion of the Magistrate. This provision directly

⁹ INDIA CONST. art. 14.

¹⁰ *Jyoti Pershad v. UT Delhi* AIR 1961 SC 1602.

¹¹ *Rajasthan SRTC v. Bal Mukund Bairwa (2)*, (2009) 4 SCC 299

¹² *Pannalal Binjraj v. Union of India*, AIR 1957 SC 397.

violates Article 14 of the Indian Constitution, which protects citizens from unreasonable and arbitrary misuse of power by authorities.

In *Jacob Puliyel v. Union of India*¹³, the Apex Court laid down two conditions that have to be met in order to infringe upon anyone's right to privacy. The first condition is that there must be a valid law in existence. The second condition is that the particular law should meet the criteria of reasonableness as mandated under Article 14. Article 14 of the Indian Constitution ensures every citizen equality before the law and equal protection of laws. This enforces a duty on the State to protect citizens from the arbitrary and unreasonable exercise of powers by the State. As has been read by the Apex Court under Article 14, equals should be treated alike, and unequal should not be treated alike¹⁴.

The Criminal Procedure (Identification) Act 2022 does not make any distinction regarding procedure and individuals detained concerning the nature of offenses committed by them. Thus, those who have committed petty offenses are compelled to undergo the same treatment as those responsible for graver offenses thus, there is no reasonable classification of collection of various measurements. Magistrates are granted excessive discretion to determine whom they may compel to provide measurements, under what circumstances, and for what purposes. There is no guidelines or any other rules. Hence the Criminal Procedure (Identification) Act 2022 is violative of Article 14.

D) Section 8 of the Criminal Procedure (Identification) Act 2022 suffers from the excessive delegation and is thus unconstitutional

Criminal Procedure (Identification) Act 2022 suffers from excessive delegation as it excessively delegates legislative powers to the executive, wide-ranging rule-making power without providing adequate guidance for the exercise of the same. It accomplishes this in two ways: first, by delegating legislative functions to the executive by granting broad rule-making powers with essentially no guidance; and second, by granting functionaries under the act (police/prison officers and Magistrates) excessive discretion to determine whom they may compel to provide measurements, under what circumstances, and for what purposes.

¹³ 2021 SCC OnLine SC 3255

¹⁴ *Gauri Shankar v. UOI*, AIR 1995 SC 55

Criminal Procedure (Identification) Act delegates unguided legislative power to frame Rules under Sections 4 and 8, thus, abdicating its legislative functions, but it also gives unreasonable discretion to the police and the Magistrate under Sections 3 and 5 to make administrative decisions and pass orders, respectively.

In Re: Delhi Laws Act¹⁵, the Supreme Court stated that “though the legislature can confer powers to make rules and regulations for carrying the enactment into “operation and effect”, it should lay down the “policy and principles providing the rule of conduct”. It is contended that the act is ambiguous about (a) The purpose for collecting, storing, preserving, or sharing of the measurements taken, (b) nature and manner of the analysis and processing such measurements, (c) functions and duties of the State-notified agencies and the NCRB (d) Purpose and process of sharing and acquiring such measurements data (e) Process of their removal and destruction of such removal. All of these are procedural safeguards that the parent statute must provide in order to eliminate the executive's arbitrary and unreasonable rule-making authority.

The Supreme Court in the judgement of Registrar, Co-operative Societies V. K. Kunjabmu¹⁶ stated that: "The power to legislate carries with it the power to delegate. However, excessive delegation may amount to abdication. Delegation unlimited may invite despotism unlimited. Legislate it by laying down policy and principle and delegating it to fill in detail and carry out policy. The delegation is valid if guidance is there wherever it may be found." But the act fails to do that.

Excessive Delegation under Section 8

Criminal Procedure (Identification) Act of Section 8 of the act asserts that the Central and State governments can make rules about the duties and process the police officers and prison staff can "take" measurements under Section 3 and 6. It also says that the governments at both levels have the power to make rules about "any other matter" that is prescribed or concerning which the rules are to be made.

¹⁵ In Re: Delhi Laws Act, AIR 1951 SC 332

¹⁶ Registrar, Co-operative Societies V. K. Kunjabmu, (1980) 1 SCC 340.

The Supreme Court, in the case *Hamdard Dawakhana v. Union of India*¹⁷, expressed that in the absence of detailed guidelines in the parent act regarding the rules, criteria, or principles by which the rulemaking powers conferred to subordinate authorities are to be exercised, legislative delegation is illegal. It is argued that the Act imposes no limitations on the powers of taking, collecting, processing, storing, destroying, sharing, and disseminating all measurements and their records or even a broad indication of the parameters within which the powers are to be exercised, therefore the Criminal Procedure (Identification) Act 2022 is unconstitutional.

i) No guidelines on the purpose, how, or under what conditions measurements and records may be collected, stored, processed, or shared.

The act does not specify how measurements and associated records will be stored. There is no indication of the type and number of databases that will be established, how they will be generated, who will build them, and who will oversee them. Thus, the act does not advise on the methods, purposes, and conditions under which these records may be used, stored, processed, and shared, with whom they may be shared; and the procedure to be followed for and after such dissemination. Therefore, the grants broad legislative authority to the Central and State governments without establishing guidelines for their exercise. In *Ajay Kumar Banerjee v. Union of India*,¹⁸ the Court stated that "declaring the legislative policy and laying down the standard with sufficient clarity" constitutes "an essential legislative function," which cannot be delegated." The act fails to lay down sufficient clarity regarding the purpose, collection and maintenance of measurements and the roles and responsibilities of the subordinate authorities and thus leads to excessive delegation.

ii) No guidelines on the procedure of disposal of measurements and their records

Section 8(2) states that the central and state government can make rules regarding the collection, maintenance, and disposal of measurements as specified in section 4 of the act. It states that the Central Government shall prescribe rules for the collection, storage, preservation, processing, destruction, sharing, and dissemination of 'records of measurements' by the NCRB and the collection, preservation, and storage of 'measurements' by the State Governments and Union Territories. Section 4(1)(b), which

¹⁷ *Hamdard Dawakhana v. Union of India* AIR 1960 SC 554.

¹⁸ *Ajay Kumar Banerjee v. Union of India* [1984] 3 SCC 127.

specifies destruction, only applies to records stored with the NCRB and not to measurements/samples themselves. It mentions record destruction only "at [the] national level." The provision in section 4(2) that references destroying the records of unconvicted arrestees applies only to records and not to actual measurements/samples. As a result, the act authorizes the Rules to provide for the indefinite preservation of all measurement and sample records. This arbitrary rule-making authority to set the time of retention - a key procedural safeguard that legislation managing sensitive personal information is unconstitutional.

Excessive delegation of discretion to a subordinate authority

Criminal Procedure (Identification) Act 2022 restraints the fundamental right (right to privacy) and must be adequately precise and transparent in terms of the extent, scope, and nature of the interference permitted, as well as the provision of adequate safeguards to prevent authorities from abusing their powers arbitrarily. This means that the law cannot allow excessive discretion if it has the consequence of constraining rights and freedoms. The grant of discretion, in and of itself, is irrelevant as long as there are guidelines governing the exercise of discretionary powers.

The Court in *Shreya Singhal v. Union of India*¹⁹ expressed that "discretion which is absolute and uncontrolled degenerates into arbitrariness."

i) Excessive discretion to police and prison officers under Section 3.

Section 3 allows prison and police officers to take the measurements of those persons covered under Section 3(1), "if so required". In contrast, there is no indication in the act as to what constitutes a requirement for police officers and prison authorities to take measurements. Therefore, the act does not mention the purposes and conditions under which this conclusion of "requirement" may be reached.

Section 53 of the Criminal Procedure Code provides for the examination of an accused by a medical practitioner at the request of a police officer. The police officer must be satisfied that there are "reasonable grounds for believing that an examination of his person will yield evidence as to the commission of an offense," taking into account the nature and

¹⁹ *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

circumstances of the offense. This act does not require this level of satisfaction before police officers can take measurements of those covered by section 3. As a result, determining when officers are 'required' to take 'measurements' under section 3 is a discretionary power that is unguided and arbitrary. It is evident that section 8 of the Criminal Procedure (Identification) Act suffers from Excessive Delegation.

II. The Criminal Procedure (Identification) Act, 2022, stands violative of Article 20(3) of the Indian Constitution

Article 20 (3) of the Indian Constitution guarantees every individual the right against self-incrimination. This is to prevent inaccurate and false testaments provided by involuntary individuals which could hamper the due process of justice. And such right against self-incrimination can only be exercised under the due procedure of law, and a fair trial. Such a right against self-incrimination would not only be confined to the courtroom but would also include all situations which may end in prosecution²⁰. However, the Picarones Criminal Procedure (Identification) Act, 2022 violates an individual's right against self-incrimination by criminalizing a person before their right to a fair trial. Section 7 of the aforementioned Act also absolves all authorities from engaging in any procedure that may be done under the ambit of attaining the object of this Act. The Act also allows police officers and prison officers to collect the finger-impressions, palmprint impressions, footprint impressions, photographs, iris and retina scan, physical and biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination of any person detained as referred to in section 53 and 53-A of the Code of Criminal Procedure 1973. This is in violation of Article 20(3) as it violates a person's individual autonomy by forcefully intruding upon their bodily integrity and compelling them to produce biometric tests that is equivalent to testimonial compulsion, thereby infringing their right against self-incrimination²¹.

i) Section 2(b) violates Article 20(3)

Section 2(b)²² empowers the police officer or prison officer to take various "measurements," which includes finger impressions, palm-print impressions, foot-print impressions,

²⁰ Selvi v. State of Karnataka (2010) 7 SCC 263

²¹ Common Cause v. Union of India (2018) 5 SCC 1

²² The Criminal Procedure (Identification) Act, 2022, § 2(b), NO. 11 OF 2022.

photographs, iris, and retina scan, physical and biological samples, and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973.

The terms biological sample and behavioral attributes are very wide, including the practices of narco-analysis, polygraph tests or brain mapping, or any other attributes of humans. These provisions are violative of Art 20(3) of the constitution of India.

Justice VR Krishna Iyer opined about the Right of Self Incrimination "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."²³

In *Selvi v. State of Karnataka*,²⁴ relying upon the international developments in domestic and international as well as our own developments under Article 21, the court held that involuntary administration of scientific tests such as narco analogy, polygraph examination, and the BEAP for the purpose of improving investigation efforts in criminal cases violate Article 20(3).

i) Section 6 (1) violates Article 20(3)

Section 6 (1)²⁵ of the Criminal Procedure (Identification) Act 2022 violates the fundamental Right Against Self Incrimination guaranteed to the citizens by the constitution of India. The authorities can obtain the measurements of the arrested, convicted, or under preventive detention. That is arbitrary in nature and unreasonable to receive the personal data of individuals in the country.

In *Naraindas v. State of Madhya Pradesh*, "Article 14 ensures equality before the law and strikes at arbitrary and discriminatory state action.... If power conferred by statute on any authority of the State is vagrant and unconfined and no standards or principles are laid down by the statute to guide and control the exercise of such power, the statute would be violative

²³ *Nandini Satpathy v. P.L. Dani and others* (1978) 2 SCC 424.

²⁴ *Selvi v. State of Karnataka* (2010) 7 SCC 263.

²⁵ The Criminal Procedure (Identification) Act, 2022, § 6(1), NO. 11 OF 2022.

of the equality clause because it would permit the arbitrary and capricious exercise of power, which is the antithesis of equality before the law".

In Bachan Singh v. State of Punjab²⁶, the court held, "Wherever we find arbitrariness or unreasonableness, there is a denial of the rule of law."

It is clearly a broad discretion that is being guaranteed under the act. The Criminal Procedure (Identification) Act,2022 provision Section 6(1) is violative of the Art 14²⁷ of the constitution of India. The Criminal Procedure (Identification) Act provides broad discretion for the police authorities under the act. Hence the act violates the provisions of Art 14²⁸ by providing arbitrary and unreasonable power to the authorities under the act violates Article 20(3) of Right Against Self-Incrimination.

The Criminal Procedure (Identification) Act 2022 is violative of Art 20(3) guaranteed under the constitution of India. Hence the law that is violative of the FRs is, therefore, to be declared unconstitutional according to Art 13(2).²⁹

III. Criminal Procedure (Identification) Act, 2022 Violative of Right to Life and Personal Liberty guaranteed under Article 21 of the constitution of Picarones.

In *Justice KS Puttaswamy (Retd) v Union of India*³⁰ bench of the Supreme Court that the Right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedom guaranteed by Part III of the Constitution. The Right to Privacy is a fundamental right enshrined under Art.21 of the constitution.

As per Article 12³¹ of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

²⁶ Bachan Singh v. State of Punjab, AIR 1982 SC 1336.

²⁷ INDIA CONST. art. 14.

²⁸ INDIA CONST. art. 14.

²⁹ INDIA CONST. art. 13(2).

³⁰ Justice KS Puttaswamy (Retd) v Union of India, (2017) 10 SCC 1.

³¹ Universal Declaration of Human Rights, 1948, art. 12.

In Kharak Singh v. State of UP³², the apex court while acknowledging the existence of right to privacy held that, despite the right not being expressly declared as a fundamental right, it is “an essential ingredient of personal liberty”. In Ram Jeth Milani v. Union of India³³, wherein the ratio of the case was “Right to privacy is an integral part of the right to life

*Section 2 (b)*³⁴ states that “measurements” includes finger impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical and biological samples and their analysis, and behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973. The data of the measurements would be saved by the National Crime Records Bureau for seventy-five years in their repository.³⁵

To begin with, the options canvassed for limiting the right to privacy include an Article 14 type reasonableness inquiry; limitation as per the express provisions of Article 19; a just, fair and reasonable basis (that is, substantive due process) for limitation per Article 21; and finally, a just, fair and reasonable standard per Article 21 plus the amorphous standard of “compelling State interest”.³⁶

The Criminal Procedure (Identification) Act 2022 is violative of the fundamental rights guaranteed under the constitution of India as the law is not just, fair and reasonable. Section 3³⁷ of the Criminal Procedure (Identification) Act 2022 provides the power for the authorities to take measures for the convicts, arrested and persons detained. Section 4(2) provides for the storage of the measurements of data for seventy-five years that is not justified or substantial. There is no link between the objects and reasons that led to the widening of the various measurements that can be obtained by the authorities, and there is no proper procedure established to obtain any of the measures also, Hence the Criminal Procedure (Identification) Act, 2022 provisions are violative of Right to Privacy guaranteed under the constitution of India.

³² Kharak Singh v. State of U.P., (1964) 1 SCR 332.

³³ Ram Jethmalani v. Union of India, (2011) 8 SCC 1.

³⁴ The Criminal Procedure (Identification) Act, 2022, § 2(b), NO. 11, Act of Parliament, 2022 (India).

³⁵ The Criminal Procedure (Identification) Act, 2022, § 4(2), NO. 11, Act of Parliament, 2022 (India).

³⁶ Justice KS Puttaswamy (Retd) v Union of India, (2017) 10 SCC 1.

³⁷ The Criminal Procedure (Identification) Act, 2022, § 3, NO. 11 OF 2022.

[IV] Criminal Procedure (Identification) Act, 2022 Unconstitutional

Criminal Procedure (Identification) Act 2022 violates the fundamental rights guaranteed under Articles 4, 21 and 20(2) of the constitution. Art. 13 is the key provision as it gives teeth to the Fundamental Rights and makes them justifiable. The effect of Art. 13 is that Fundamental Rights cannot be infringed by the government either by enacting a law or through administrative action. The Criminal Procedure (Identification) Act 2022 is violative of Fundamental Rights such as Articles 14, 20(3), and 21 of the constitution of India. Article 13(2)³⁸ of the constitution of India states that the State shall not make any law which takes away or abridges the rights conferred by this Part, and any law made in contravention of this clause shall, to the extent of the contravention, be void. Hence the Criminal Procedure (Identification) Act 2022 is unconstitutional and void.

³⁸ India Const. Art 13(2)