

Criminal Procedure (Identification) Bill, 2022: a Fine Balance Between Administration of Justice and Right of Defence of an Accused

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The Criminal Procedure (Identification) Bill, 2022, which aims to repeal and replace the Identification of Prisoners Act, 1920, was recently passed by the Parliament. The Bill has been introduced to help investigating agencies gather sufficient legally admissible evidence in connection with an accused person. Its introduction has sparked a debate on the encroachment upon constitutional guarantees of right against self-incrimination and right to privacy.

Before advancing to the arguments of critics, let us get a true picture of what the original Act provides for and what the Bill intends to provide for. Under the Act of 1920, the term ‘measurements’ has been defined to include finger impression and foot-print impressions. However, keeping in mind the advancement in scientific and technological fields, the Bill has expanded this inclusive list to provide for finger-impression, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, 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 (Cr.P.C.).

It has been contended that coercing an individual (whether convicted or otherwise) to give measurements in a criminal investigation and/ or trial will result in a violation of the individual’s right against self-incrimination enshrined under Article 20(3) of the Constitution of India. This right entails that no person accused of an offence shall be compelled to be a witness against himself. These arguments are flawed and based on incorrect appreciation of judicial precedents. First, several judgments have categorically held that measurements such as finger-impression, voice-samples, etc. are not in the nature of a ‘personal testimony’. The kind of measurements covered under the Bill cannot be intrinsically changed and are used only as materials of comparison to lend assurance to a court that its inference based on other pieces of evidence is reliable. These are neither oral nor documentary evidence and fall outside the ambit of testimony. The Supreme Court has held that “[g]iving thumb impressions or foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression ‘to be a witness’.” Secondly, most of the specified measurements under the Bill are already covered under different stages of criminal investigation and trial under the Cr.P.C. For example, under Section 53, a medical practitioner is authorised to conduct an examination on an arrested person and such examination ‘includes the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered

The Criminal Procedure (Identification) Bill, 2022 revamps the century-old law relating to measurements to bring in scientific and technological advancements in the field such as fingerprints, footprints and retina scans to identify individuals covered under the Bill. It is likely to make the investigation process more efficient while retaining the right to defence of an accused.

medical practitioner thinks necessary in a particular case'. Under Section 311A of the Cr.P.C., the Magistrate is empowered to order a person to give specimen signatures or handwriting during investigation or proceedings under the Cr.P.C. In fact, the Supreme Court, while exercising its jurisdiction under Article 142 of the Constitution of India, conferred powers on the Magistrate to order any person to give voice samples until explicit provisions are engrafted under the Cr.P.C. The Bill simply consolidates and updates the various legal provisions and judicial precedents in one common legislative framework.

Critics have challenged the Bill on the grounds that coercion to give measurements will result in a violation of the right to privacy enshrined under the Constitution of India and as restated by the Supreme Court in the *Aadhaar* Judgment. The reliance on the *Aadhaar* Judgment is incorrect as the Supreme Court clarified that its judgment was not being passed in the backdrop of a crime prevention legislation. In the present context, which deals with a crime prevention legislation, several judicial precedents have already upheld the constitutional validity of similarly placed laws such as Sections 53, 311A of the Cr.P.C. and Section 73 of the Indian Evidence Act, 1872. Further the proportionality and reasonableness of the Bill is justified by the following:

- Unlike the old Act, the Bill imposes an obligation to share measurements with a police officer for grave offences committed against a woman or a child or for any offence punishable with imprisonment for a period not less than 7 years. Under the Act, convicted persons and persons who had been arrested for offences punishable with rigorous imprisonment for a term of 1 year or upwards were required to give their measurements to police officers.
- The law as it stands under the Act, does not provide the manner of collecting the measurements by police officers. It merely provides that measurements are to be collected by police officers in the 'prescribed manner'. Several judicial decisions have discussed the import of 'prescribed manner' and whether it entails a requirement of an executive rule for implementation. However, necessary safeguards have been provided for in the Bill, which provides that police or prison officers can take measurements as may be prescribed by the Central Government or State Government, thereby mandatorily requiring executive checks and balances.
- The measurements collected by police officers are not considered as gospel truth either under the Act or Bill. A police officer can either collect the measurements on his own or approach a Magistrate to pass necessary orders for taking of measurements. In the event police officers take the measurements on their own, they bear the burden to dispel doubts as to its *bonafides* and to rule out fabrication. Hence, the Bill continues to encourage police officers to take measurements by approaching a Magistrate.

To summarise, the Criminal Procedure (Identification) Bill, 2022 is the Identification of Prisoners Act, 1920 in its new avatar just a 102 years later. It has consolidated and updated the law relating to measurements of individuals covered under the Bill, bearing in mind scientific and technological advancements. It is a welcome piece of legislation which is targeted towards a more efficient investigation process while retaining the right to defence of an accused.

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