

LAW & POLICY UPDATE

DISPUTE RESOLUTION & ARBITRATION



Faranaaz Karbhari
Counsel



Akriti Shikha
Associate

The Criminal Procedure (Identification) Act, 2022

The Criminal Procedure (Identification) Act, 2022 (**2022 Act**) was enacted with the aim of authorizing law enforcement agencies to take measurements of convicts and other persons for the purposes of identification and investigation in criminal matters. The 2022 Act, which received the President's assent on April 18, 2022, came into force on August 04, 2022. The 2022 Act repealed the Identification of Prisoners Act, 1920 (**1920 Act**), which is a colonial law that permitted the collection of fingerprints, footprint impressions, and photographs of convicts and others. In this note, we summarize and analyze the key features and challenges to the 2022 Act.

Key features of the 2022 Act

- **Definition of measurements**
 - The 2022 Act has redefined and broadened the scope of 'measurements' to include finger-impressions, 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, 1973 (**CRPC**).
 - The 1920 Act only allowed measurements of finger and foot-print impressions.
- **Taking of measurement**
 - The 2022 Act covers the collection of measurements not only from convicted persons but also persons under preventive detention or arrested for any punishable offence.
 - The 2022 Act authorizes the police or prison officials to compel a person to give measurements.
 - In order to aid in an investigation or proceeding under the CRPC, the 2022 Act empowers a Magistrate to pass an order directing any person to give measurements.
 - However, Section 3 of the 2022 Act carves out an exception for person(s) arrested (except for an offence committed against a woman or a child, or for any offence punishable with imprisonment for a period of seven years or more), from allowing the taking of their biological samples.
- **Collection, storing, preservation of measurements and storing, sharing, dissemination, destruction and disposal of records**
 - The 2022 Act empowers the National Crime Records Bureau (**NCRB**) to collect, store, preserve and destroy the records of measurements at a national level. The NCRB is also authorised to share such records with any law enforcement agency.
 - The data collected will be retained in digital or electronic form for 75 years. The records will be destroyed in case of persons who are acquitted or released without trial; however, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.

HSA Viewpoint

In entirety, there has been considerable evolution as compared to the previous 1920 Act. It is essential to note that the 2022 Act is digitalizing the criminal records and paving the way to make data with respect to criminals easily available through a centralized database, thereby being in accordance with the global standards adopted by various other countries. However, considering the challenges discussed in the conclusion, it is imperative that the 2022 Act be re-examined and re-considered, to provide a balance between the fundamental rights of those being investigated and the objective of the State to conduct criminal investigations efficiently.



▪ Resistance to allow taking of measurements

- The 2022 Act attaches criminal liability for resistance or refusal by any person to allow taking measurements. As per Section 6 of the 2022 Act, resistance or refusal shall be deemed to be an offence under Section 186 of the Indian Penal Code, 1860 which provides punishment for obstructing public servant in discharge of public functions, wherein the person may be imprisoned for a term which may extend to 3 months or with fine which may extend to INR 500 or both.

▪ Power to make rules

- Under the 1920 Act, the power to make rules relating to criminal investigations was entrusted with the State governments; however, the 2022 Act vests the rule making power in the Central government and the State government.

Key challenges of the 2022 Act

- The terms such as ‘analysis’, ‘biological samples’ and ‘behavioral attributes’ used under the definition of ‘measurements’, do not have a set threshold, leaving them open to wide interpretation and thus, leading to transgressing the right against self-incrimination provided under Article 20(3) of the Constitution of India.
- The blanket mandate to collect measurements under the 2022 Act restricts the fundamental right of privacy without proving proportionality of the Act despite the landmark decision in *K.S. Puttaswamy v. Union of India*¹ that laid down a four-fold test of proportionality to satisfy the infringement of the right to privacy.
- The 2022 Act attaches criminal liability under Section 186 of the Indian Penal Code, 1860 for resistance or refusal by any person to allow taking measurements, thereby amounting to forcible extraction of testimonial response. Such criminalization is in violation of an individual’s right against self-incrimination under Article 20(3) of the Constitution of India and further impinges on the right to life and liberty under Article 21 of the Constitution of India.
- By empowering a Magistrate to pass an order directing any person to give measurements, the 2022 Act makes it discretionary on the part of such Magistrate to provide any reason for it. The same is in contravention of Article 14 of the Constitution of India, which gives a person right against arbitrary and unreasonable State action.
- The 2022 Act does not make any distinction between the categories of accused persons based on the nature of offences and thus, it makes a person accused of any petty offence to be treated at par with a person accused of heinous crimes.
- The 2022 Act envisages record-keeping by the NCRB but does not specify how they would be created and managed. Similarly, there is distinct lack of clarity regarding the means of securing the data and the manner in which the records are to be shared.
- The 2022 Act leaves the door open for abuse of powers by providing discretionary powers to the police or prison officials to take measurements ‘if so required’.
- By extending the power to legislate and/or make rules under the 2022 Act to the Central government, it may give rise to conflicts with State authorities who are also empowered under the 2022 Act.
- The 2022 Act neither provides any specific guidelines nor elucidates any procedural safeguards for collection, storage, processing, sharing and destruction of measurements.
- The 2022 Act is also in violation of right to privacy under Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights, 1966 which provides protection to persons against arbitrary interference with their privacy, family, home, correspondence, honor and reputation.

Conclusion

The 2022 Act is a welcome piece of legislation which is targeted towards advanced prisoner identification techniques and a more efficient investigation process. However, the 2022 Act had garnered heavy criticism when it was passed, with critics describing it as excessive, disproportionate, violative of the right to privacy, as well as raising data privacy concerns. Consequentially, Advocate Mr. Harshit Goel moved the High Court of Delhi seeking a judicial review of Sections 2(1)(a) (iii), 2(1) (b), 3, 4, 5, 6 and 8 of the 2022 Act. Vide Order dated April 21, 2022, the Court directed the government to file its response and listed the matter for hearing on November 15, 2022. The matter is bound to reach the Supreme Court of India sooner or later which would then decide the fate of the 2022 Act. Thus, the judiciary will reflect and analyze both sides of the coin with regards to the constitutionality of the 2022 Act.

¹ (2017) 10 SCC 1

