

## TECHNOLOGICAL ADVANCEMENTS AND IDENTIFICATION OF PRISONERS IN INDIAN LEGAL SYSTEM: A BOON OR VIOLATION OF FUNDAMENTAL RIGHTS

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### ABSTRACT

The Code of Criminal Procedure, 1973 is a procedure code established for preventing crimes and helps to get remedies to the aggrieved party. It is a procedural law that provides a systematic procedure to the substantive criminal laws so that these laws come into force efficiently. In this new era of technologies, crimes have been committing through various cyberspace, and our Criminal Procedure Code and Indian Penal Code needs to be efficient for preventing those crimes. The Code of Criminal Procedure, 1973 has numerous amendments by parliament as per the societal needs. Recently, the Code has been replaced by Nagarik Suraksha Sanhita to match the contemporary era which became operative from July, 2024. In India, due to a lack of proper investigation tools and procedural delay now 44 million cases are pending in all the courts of India. Indian Justice System governs by Dicey's 'Rule of Law' through which we can get a fair and just procedure trial hence we are bound by basic tenets of the justice system so before amending any Act or Statute, parliament needs to take care of these principles. In 2022 parliament passed one of the controversial and unique amendment through parliamentary proceedings which bring a new amendment in The Code of Criminal Procedure Act known as The Criminal Procedure Code (Identification) Act 2022. This amendment adopts for having better investigation technologies in order to solve the cases successfully which will helps to have easy disposal of cases. Though this paper author trying to present a critical analysis of this bill which includes international legal perspective related to identification of prisoners, overview of The Identification of Prisoners Act, 1920 and The Criminal Procedure Code (Identification) Act, 2022 Amendment effects on Part III of the Constitution and merits and demerits of the new CRPC Amendment Act 2022, The probable impacts of the society this new CRPC Amendment Act, 2022 intense to bring.

**Key Words:** Technology, Rule of Law, Fundamental Right, Cyberspace, Prisoners.

### INTRODUCTION

The late 1960s witnessed one of the major evolutions of the internet which affected the whole world immensely. After the expansion of the internet throughout the world, it is very easy to connect with each other in cyberspace. As it has lots of positive impacts on human life but it also has many adverse effects because society is bound by the concept of morality, justice, and obedience to the law and now

day's violation of laws through the internet is so much easy by technologies'. In India, Arthashastra provides a list of forensic evidences in contemplation of proving the cause of death. According to him, death can be happen by strangulation or asphyxia or hanging or drowning, or poisoning along with physical injury (R. Shamasastri, 1915). Kautilya expressed the necessity of autopsy together with the investigation in the situation of death due to poisoning or else suicide. Likewise, the title role of medical jurisprudence is to help in the administration system of justice. A medical professional during his duty steps into the area of law and examines cases of injuries or murder or rape or sodomy or insanity or poisoning and many more. The medical evidence comprises of the report of a doctor or expert or serologist or chemical examiner together with oral evidence from doctors as well as experts. The viewpoint of a doctor, as well as an expert, is consider as corroborative.

For maintaining law and order in cyberspace Information Technology Act 2000 came into force in India but the objective of this Act was to give recognition to electronic data. Hence Supreme Court gave recognition to the Right to Privacy concept in the case of *Puttuswamy v. Union of India (2017)*, court held that the Right to Privacy is a fundamental right under Article 21 which gave boots to the Information Technologies Act, 2000 to ensure justice in the matter of cybercrime. As crimes are increasing through technologies therefore we also need to have proper tools for the investigation of those crimes. The most used investigation tool in India is Forensic Technology which collects all data in the crime scenes such as fingerprints and Computer data, Drug testing by forensic scientists. It is foremost to know that the evidence acquired in cybercrime will not always be in the physical state as we get in other types of crimes like rape or assault or any other crime. The evidence acquired can be physical rather can also be digital. Digital evidence furnishes in the form of patterns of bits along with bytes (B. Fakiha, 2019). This pattern can consider as evidence itself and therefore can link to specific evidence that can assist in the investigation. The digital evidences are not available by just prefacing the system there are certain digital approaches that have to be followed to access them. Now, this key evidence can be restored with the help of specific tools that will access it to create a report which will display it to the investigator all by itself. Not only they do this but they also assist in maintaining the integrity of the evidences or the obtained data. This is done by cloning the evidence along with running various analysis schemes on the cloned data along with not on the actual data that may crash the evidence during the process of analysis (New Technology for Investigation, 2005).

Forensic technologies are modernizing in recent years by developing the sensitivity together with the strength of the investigative capability of forensic scientists. Forensic science is a broad field together with consolidates various technologies ranging from pattern recognition to chemical composition to DNA analysis. Various fields within forensic science upgraded considerably over the years along with new technologies have enabled new applications of forensic science. Fingerprints or palm-prints along with footmarks have been massively perceived together with acknowledged as a reliable means to identify a person. The friction ridge arrangements on a fingerprint or a footprint may be left on an object when it is come into contact by touch. This allows the notion which is used for the personal identification of individuals in a criminal investigation. The Use of suitable tools will prompt differentiating proof, gathering or protection, documentation along with the presentation of electronic confirmation obtained from digital sources for the purpose of facilitating the reimposition of acts found to be unlawful. Hence proper tools will assist us to get authenticate evidences along with provide us key information about the

crime. For getting accurate evidences that will help in investigation so Criminal Procedure Code (Identification) Bill 2022 was introduced in Parliament. The Act approves the collection of unquestionable identifiable information about identified persons who are convicted for trial proceedings.

## **INTERNATIONAL LEGAL PERSPECTIVE RELATED TO IDENTIFICATION OF PRISONERS**

Various International Conventions always supported prisoners' rights. The Preamble to the Universal Declaration of Human Rights anticipates that "it is necessary that if a man is not to be impelled to have recourse as a last resort, to revolution against tyranny or oppression, that human rights should be safeguarded by the rule of law" (Aruna Sharma, 2007). Under Article 9 of the same Declaration declares that "no one shall be amount to arbitrary arrest or detention or exile". India rectified this declarations and have made provisions under this declaration. As per the Article 7 of the International Covenant on Civil and Political Rights gives that "no one shall be amount to torture or to cruel and inhuman or degrading treatment or any punishment" (along with in particular, that "no one shall be put through medical or any scientific test without his free consent" Human Rights Council, 2013). It is very common for investigative agencies to collect personal data. Numerous countries including the US along with the UK, accumulate biometric samples of arrested or convicted persons such as facial features or fingerprints, or retina scans (Dr. Krisztina Huszti-Orbán and Prof. Fionnuala Ní Aoláin, 2020). Biometric tools have successfully been used for justifiable public interest purposes. It played a vital role in criminal justice processes but it has also been interrelation with gross human rights violations or atrocity crimes along with by oppressive as well as authoritarian regimes.

In the time of Hitler, Nazi party also practiced identifiable origin methods for the Jewish community in order to identify the bodies of registered prisoners who had died. The prohibition in article 7 of the International Covenant on Civil and Political Rights which prescribes that 'All persons should not be deprived of their liberty shall be treated with humanity along with respect for the inherent dignity of the human person' (Human Rights in the Administration of Justice, 2003).

Chinese authorities in the Xinjiang Uyghur Region, Countering Terrorism Law they had Implemented measures and collected mass collection of biometric data which includes DNA samples and fingerprints and iris scans along with blood types of residents of that region which have increased concerns of violation of human rights (Proposals to include DNA in national biometric identification schemes: human rights implications, 2020). In 2008 the Grand Chamber of the European Court of Human Rights had delivered judgment in the case of S. and Marper v. the UK, the indefinite retention of biological samples such as forensic DNA profiles along with fingerprints in England is a breach of Article 8 of the European Convention on Human Rights and it fails to strike a fair and reasonable balance between the public and private interests. It is also disproportionate to the private life of the individuals along with cannot be considered as necessary in a democratic society. Statistics accumulated by the Government had shown that keeping innocent people's records on the DNA database did not assist to solve crimes along with retaining samples increased privacy concerns whereas it was not being beneficial for investigation purposes (Sundaram Bharti, 2020).

## **OVERVIEW OF THE IDENTIFICATION OF PRISONERS ACT 1920**

A British era law 'The Identification of Prisoners Act 1920' was the only law in India till date which permits the Police to collect the basic identifiable information including fingerprints along with footprints of the detained as well as convicted persons. With the development of technology as well as the requirement for scientific analysis of crime, criminology, the provisions of the above Act were inadequate (The Identification of Prisoners Act, 1920). In 1980, while scrutinizing the 1920 Act, The Law Commission of India had noted the requirement to revise it to bring it on edge with modern trends in the criminal investigation. In March 2003, the Expert Committee on Reforms of the Criminal Justice System which had been Chaired by Dr. Justice V. S. Malimath and proposed to amend the 1920 Act to authorize the Magistrate to the collecting the data such as blood samples or hair or saliva as well as semen.

The foremost concept of The Identification of Prisoners Act, 1920 was that ten guilty persons may escape but one innocent should not suffer and our administration justice follows the rule that every accused is innocent unless and until his/her innocence is proved beyond reasonable doubt. 87<sup>th</sup> Law Commission Report exclusively dealt with the Identification of Prisoners Act. The Law Commission described that this Act provides importance to three species of evidence such as fingerprints and measurements as well as photographs (Justice P.V. Dixit, 1980). The aim of this Statute is to facilitate the identification of criminals and suspected criminals.

This Act permits the taking of various coercive measures in contemplation of facilitating the identification of convicts and persons arrested in connection with specific offences along with persons ordered to provide security in certain cases. Section 2 of The Identification of Prisoners deals with definition clause. In this Section 'Measurements' comprises of finger impressions as well as footprint expressions. Under Section 3 of this Act permits that police officer can take measurements and photographs of convicted persons (who is convicted of any offense which is punishable by rigorous imprisonment for a term of one year or upwards or who has convicted any offence which would render him to liable to increased punishment on a subsequent conviction and ordered under section 118 of the Criminal Procedure Code, 1898). Under Section 4 of this Act also talks about police officers can also allow to take measurements from non- convicted persons hence non- conviction means those who had been arrested in connection with an offence which is punishable of rigorous imprisonment for a term of one year or upwards. Under Section 5 of this Act Magistrate also have a power to pass an order for a person to be measured or photographed for the purpose of investigation under the Criminal Procedure Code, 1898. In 1980, the Law commission had suggested modifying the Identification of Prisoners Act to bring it on the same path as modern technology together with supporting the requirements of criminal investigation.

Later in 2005, the Code of Criminal Procedure was modified to authorize a magistrate to order for collecting handwriting samples along with photographs of any person for the purpose of investigation. Even this was develop as to be lacking from the perspective of progressing scientific analysis of crime or criminology as well as it is progressing crime investigation systems in the modern world. The Identification of Prisoners Act, 1920 added value in today's modern investigation but the lacuna of this Act that it gave all the powers of collecting measurements related identifiable information about

investigation in the hand of police officer which resulted sometimes difficulties. Power of taking measurement should be in the hand medical practitioner or any forensic professionals.

### **THE CRIMINAL PROCEDURE CODE (IDENTIFICATION) ACT 2022 AMENDMENT AFFECTS ON THE PART OF III OF THE CONSTITUTION**

On 28<sup>th</sup> March, 2022 The Criminal Procedure (Identification) Bill 2022 was introduced in the Loksabha with intention of using better technologies in investing criminal cases. This is a modern fusion of advanced technologies with forensic science so that we can have evident or conclusive circumstantial or physical evidences. This Bill talks about the replacement of The Identification of Prisoners Act, 1920 and the bill permits law enforcement agencies to collect or store along with examining the physical as well as biological samples of convicted individuals or other persons in criminal matters. After a long discussion on 6<sup>th</sup> April, 2022 Rajya Sabha passed The Criminal Procedure (Identification) Bill 2022 and 18<sup>th</sup> April this got president's asset, now this Bill converted into an act. Under Section 2(b) of the said Act talks about measurement which includes finger-impressions or palm-print impressions or foot-print impressions or photographs or iris along with retina scan or physical or biological samples as well as their analysis of behavioral attributes which includes signatures, handwriting and any other examination referred under Section 53 and 53A of Code of Criminal Procedure Act 1973. This Act also gives immense power to police officers to collect all the measurements. This Act widens the scope of offences in which measurements can be collect hence it includes all the offenses as mentioned in the Indian Penal Code 1860 and as well as persons detained under Unlawful Activities (Prevention) Act, 1967 (The Criminal Procedure Identification Act, 2022).

Under Section 4 of the Criminal Procedure (Identification) Act, 2022 also has a concept of preserving the measurements of the accused. National Crime Record Bureau (NCRB) have a power to record, store or preserve and destroy the measurements in the interest of Prevention or detention and investigation as well as prosecution of any offence. These measurements have been restoring for 75 years by National Crime Record Bureau (NCRB). It will share the data with law enforcement agencies and states or union territories may notify those agencies to collect or preserve along with share data in their respective jurisdictions. Records can be destroyed in case of persons who are acquitted by courts after all the appeals in the Apex court or also can be released without trial therefore, in such cases Court or Magistrate may give permission to retain the details after recording reasons in writing. Section 6 of this Act talks about that no one shall resist or refuse for taking the measurements.

#### **i. Advance concepts of right to privacy in India**

The general concept of privacy can be conceive as acts or practices which we want to hide from public scrutiny. The concept of privacy rights was first introduced as a human right along with clarified in the pioneering article of Warren and Brandies, named as "The right to privacy". Various philosophers have indirectly mentioned the concept of privacy in their works. Likewise, According to Aristotle's identification of two spheres of an individual's life viz. the 'polis' or as the public sphere as well as 'Oikos' or as the private sphere. Jeremy Bentham had also acknowledged the existence of privacy

elements in every individual's life. Even Shakespeare had his own thoughts about privacy which is undeclared as well as comprised of a sense of social secrecy.

Privacy is a fundamental human right cherished in various international human rights instruments. These are the predominant tools for the protection of human dignity along with structures of the basis of any democratic society as well as supports and reinforce other rights example as the freedom of expression or information together with association. India has already accepted the International Covenant on Civil and Political Rights ('ICCPR') and acknowledged the concept of the Right to Privacy in the Indian Constitution. According to Article ICCPR of 17 deals with “, no one shall be amount to arbitrary or unlawful intervention with neither in his privacy or family or home or correspondence nor to unlawful abuse on his honor and reputation” (Stakeholder Report Universal Periodic Review 27th Session: India, 2016). The Human Rights Committee has recognized that states party to the ICCPR needs to adopt positive obligation towards enacting legislations or other measures to give effect to the prohibition against such interventions along with attacks as well as to the safeguarding this right to privacy.”

In India the concept of the Right to Privacy evolves through judgments. In the case of *Kharak Singh v. State of Uttar Pradesh* (Eriola Cakrani, 2013), the Apex court held that Right to privacy is not a fundamental right but still it dispensed the judgment on the side of right to privacy by restating that the police regulation of night domiciliary visits as the ultra -vires intrusion to personal liberty. The narrow scope of Article 21 that rejected to consider if the procedure established by the law faced any deficiencies as ascertained in *AK Gopalan's* case has been widened by *Maneka Gandhi's* case of 1978 which upheld that the procedure established by law must be just, fair along with reasonable. The versatile aspect of judgment also covers the concept of right to privacy needs to be accessible to the women of easy virtues as was upheld in the case of *State of Maharashtra v. Madhukar Narain* (1991). Another landmark judgment which is *Ram Jethmalani v. Union of India* (2011), Apex court upheld that Right to Privacy is an indispensable part of right to life and a cherished constitutional value along with it is important that human beings be authorized domains of freedom that are liberty of public scrutiny unless their acts are unlawful. After all landmark cases one of the prominent case of right to privacy came in 2017 through the *Puttaswamy* (Shubhanshi Phogat, 2021), judgement apex court stated that right to Privacy is fundamental right under Part III of the Constitution and right to privacy is also protected under Information Technology Act, 2000. In the case of *Faheema Shirin v. State of Kerala* (2019) announced that 'right to access internet' is a fundamental right establishing part of right to privacy under Article 21 of the constitution (Arpit Gupta, 2018). In another recent case of *Prakash v State of Kerala* (2020) the court held that a 'citizen's choice to rear pets' is detectable under right to privacy which comes under the purview of the Constitution.

As innovations in information technology have empowered previously as an unformed forms of collecting or storing along with sharing personal data or the right to privacy has developed to enclose the States obligations associated with the protection of personal data (Dr. Justice V.S. Malimath, 2003). Numerous international instruments acknowledged data protection principles along with many domestic legislatures have included such principles into national law. Through this International instruments

Information Technology Act, 2000 have many new amendments to cope up with the developing crimes in the field of technologies.

According to the Section 69 of the Information Technology Act, 2000, permits the interception or monitoring along with decryption of digital data in the interest of the sovereignty as well as integrity of India and the defense of India or security of the State or friendly relations with foreign nations or public order or stopping the incitement to the commission of any cognizable offence also for the investigation of an offense. But the loophole in this act that it gives power to access the data to government indirectly but it has given the authority without any limitation for accessing the individual's data (Information Technology Act, 2000).

#### Violation of Article 21 and 14 of the Constitution

In this new bill the scope of measurements has widened which resulted in a concern on violation of privacy and Article 14. Our administrative justice system follows concept of 'Rule of Law' which is propounded by Dicey. The principles of rule of law are absence of arbitrary power while law-making and everyone is equal in the eye of law along with the preponderance of legal spirit (Esh Gupta, 2019). These elements needs to be followed by legislation while making any law and these elements are enshrined under Article 14 and 21 of the Constitution.

This new Act comprises violations of the right to equality which is enshrined under Article 14 of the Constitution because of unreasonable classification to arbitrariness hence it also delegates legislative authority's power to the executive authority unreasonably by giving the executive with extensive rule-making powers without any authorized guidance. The concept of Right to Privacy under Article 21 infringes by collecting or storing or preserving along with sharing an individual's sensitive personal information for the investigation of crime without any reasonable investigation ground. Investigation cannot costs of infringing the privacy and liberty of the individual.

#### **MERITS AND DEMERITS OF THE NEW CRPC AMENDMENT ACT 2022**

This new amendment Act has many advantages and disadvantages. The advantages are that it may add value to criminal justice by providing accurate and corroborative data or evidences on the basis of science which cannot be disproved. This Act has a power to strengthen the capacity of the police as well as the forensic department.

There are many disadvantages those are that under Clause 4 of the Bill gives the concept of storing the record of measurements but fails to give details about the purpose of storing such data. In the absence of an explicit purpose for which such record may be the measurements collected of a suspect and it can also be used to access digital along with physical belongings of an individual which includes electronic devices (Ali Alibeigi, Abu Bakar Munira & Md Ershadul Karima, 2019). Measurements also includes DNA it means a DNA database permits the government or police or to anyone who gains access to it to trace individuals along with their families even though they have not committed crimes but a suspect. It is very much open to government to misuse the data. Errors are also more likely to occur where DNA from a crime scene comprises a mixture of various cells from more than one person which is often

happen in rape cases and it can also falsely implicate as well as DNA identification is not foolproof there can be an error in the process of analysis (Mayur Patankar & Deepika Bhandari, 2014). Section of this said act also defined 'any person', it includes Unlawful Activities (Prevention) Act, 1967 and under this Act police officer can arrest any suspect and can be detained so if this Act applies then police officer can take the measurements of the suspect without any proper ground of investigation which will result violation of his constitutional rights and this measurements procedure applies both in the case of cognizable and non-cognizable offences which is a matter of concern. There is also a concern regarding collection of data by police officers or head warden of jail and procedures for taking measurements are also not mentioned in this Act. Under Section 6 of this Act, if anyone tries to restrain themselves from taking the measurements by the police officer then it is lawful to get the measurements by using force or compulsion which is violation of human rights and collection of data for 75 years is a threat to privacy as well as can be misuse by government and the Act doesn't have data protection laws related those collected private data's which will be preserved for long term because it can be hacked by the hackers easily and they can tamper the evidences which may lead to miscarriage of justice.

#### **THE PROBABLE IMPACT OF THE SOCIETY THIS NEW CRPC AMENDMENT ACT 2022 INTENSE TO BRING**

Every law have a social impact, it can be positive or negative. It always depends on the administrative procedure that how this law is implemented in our society. This Act would affect every kinds of crimes because this Act includes both cognizable and non- cognizable. Under this Act the definitions are not clear, it have ambiguity which may lead to confusion and because of this confusion an individual can easily be harass. Police officers can easily use third degree treatment for collecting the biological or physical samples which may lead to increase in custodial death or custodial violence. If there is any kind of error in the examining the samples then an innocent can be punished. If any suspect gets acquittal and after that anyone prefer appeal against that acquittal therefore the appeal goes so on so it takes years to remove that person's private data hence by any chance those data's are leaked then it would be a grave violation of privacy along with we does not have any law related to 'right to be forgotten'. If the crime is not much serious (example negligent driving etc.) then also that persons needs to be give all the personal data which would harass that person as well as his data will be saved for 75 years. Accurate evidences shall find the accused but shall not cause harassment of the suspect.

#### **CONCLUSION & RECOMMENDATIONS**

The Criminal Procedure (Identification) Act 2022 is a new concept towards the technological development for investigating any offence but before making any law on the basis of technologies we need to see that do we have strong laws in the Information Technology Act, 2000 because this is new Act itself it is on the amendment process so how we depend on this Act for preventing more emerging crimes. Neither we have any specific laws regarding protection of biological database nor have any legal provision to prevent abuse of the biological database which can be later dominate by government or agencies as we cannot give all our private data in the hand of government or any government authorized agencies though it is a matter of investigation. As we know that bureaucracy system is too much corrupted and it needs reformation then also we gave so much power to policer officers under this new Act. Therefore, under this new Act measurements are covered wide range of tests so it doesn't set limits for a required specific investigation it means police officers have wide power to collect whatever



samples they want but it may not require for that specific case. For conducting fair, just and reasonable investigation first we need to make laws or modify the law in the IT Act, 2000 because it is the base legislation for governing technologies if there is any loopholes then whole investigation system will fall apart. We cannot deny the fact that restoring and preserving DNA identities of any accused or suspect is violation of human rights and as well as our fundamental rights so we need to specify or need to define biological and physical samples or modify those Sections of the Criminal Procedure (Identification) Act 2022. Investigation needs to have some limits it cannot go above the 'Rule of Law'.

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