

## UNFOUNDED APPREHENSIONS ABOUT THIS ACT

Relevant for: Indian Polity | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

“The Criminal Procedure (Identification) Act does not mandate the compulsory recording of all measurements for all types of offences” | Photo Credit: Getty Images/iStockphoto

The Criminal Procedure (Identification) Bill, 2022 (now Act), that received the President's assent on April 18 and 'shall come into force on the day of such notification', has raised eyebrows. The Act authorises the police and prison authorities to take 'measurements' of convicts and others for the purpose of identification and investigation in criminal matters and to preserve records. The allegation is that the Act is unconstitutional and may be subject to misuse. The Act seeks to repeal the Identification of Prisoners Act (IPA) of 1920, whose scope was limited to recording measurements which include finger impressions and footprint impressions of certain convicts and non-convict persons.

While the scope of the 'measurements' in the IPA was limited, the Act now includes physical measurements such as finger impressions, palm prints, footprint impressions, photographs, iris and retina scans; biological samples and their analysis; and behavioural attributes including signatures, handwriting; or any other examination referred to in Sections 53 or 53A of the Code of Criminal Procedure (CrPC), 1973.

The CrPC provides for 'examination' (of the accused by a medical practitioner) which includes examination of blood, semen, swabs (in the case of sexual offences), sputum and sweat, hair samples and fingernail clippings using modern and scientific techniques including DNA profiling and other necessary tests which could provide evidence as to the commission of an offence. Similarly, Section 311A of the CrPC empowers a magistrate to direct any person (including an accused person) to give a specimen signature or handwriting for the purpose of any investigation or proceedings.

It is evident that the apparently enlarged scope of 'measurements' in the Act is nothing but a merger of the scope of 'measurements' in the IPA and provisions of the CrPC highlighted above, with the addition of modern techniques of identification such as an iris and retina scan. Thus, the Act does not empower the enforcement agencies additionally but only explicitly provides for various measurements and includes the use of the latest scientific techniques.

The old code, the Code of Criminal Procedure, 1898, did not have the provision of medical examination of the accused. The Law Commission, in its 41st Report (1969), considered the necessity of physical examination of the arrested person for an effective investigation, without offending Article 20(3) of the Constitution. The recommendation was included in the CrPC (of 1973), as Section 53. Later, an amendment was made in the CrPC (with effect from June 23, 2006) and an *Explanation* of 'examination' was added to Section 53 to provide legal backing to materials/biological samples on which the medical examination could be conducted. Similarly, Section 311A was added to facilitate providing a specimen signature or handwriting during investigation.

As early as 1961, the Supreme Court of India in *State of Bombay vs Kathi Kalu* held that the person in custody giving his specimen handwriting or signature or impression of his thumb, finger, palm or foot, to the investigating officer, cannot be included in the expression "to be a witness" under Articles 20(3) of the Constitution. Similarly, in a catena of cases, it has been held that taking a blood sample for the purpose of a DNA test, taking a hair sample or voice sample

will not amount to compelling an accused to become a witness against himself, as such samples by themselves are innocuous and do not convey information within personal knowledge of the accused. Thus, the constitutionality of collecting biological samples or other measurements for facilitating investigation, has been settled since long.

The only exceptions are scientific techniques, namely narcoanalysis, polygraphy and brain fingerprinting which the Supreme Court in *Selvi vs State of Karnataka* (2010) held to be testimonial compulsions (if conducted without consent), and thus prohibited under Article 20(3) of the Constitution. These tests do not fall under the scope of expression “such other tests” in Explanation of Section 53 of the CrPC. The Court also laid down certain guidelines for these tests.

Since the Act does not lay down any specific scientific tests for the analysis of biological samples or otherwise, taking any sample or measurements for the sake of identification or comparison would not automatically violate any constitutional provision. The validity of any new scientific technique, to be applied in future, would need to be tested on the touchstone of permissible restrictions on fundamental rights.

The IPA includes three categories of persons, namely, ‘convicts of any offence punishable with rigorous imprisonment for a term of one year or upwards or of any offence which would render him liable to enhanced punishment on a subsequent conviction; persons ordered to give security for their good behaviour; and persons arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards’.

The Act has done away with any such limitation for convicts and arrested persons. However, it is important to note that most offences punishable with imprisonment up to one year are non-cognisable. Otherwise too, for example, in a simple cognisable offence (though punishable with simple imprisonment up to only one month or fine) of a chakka-jam (which generally take place during political and other protests), though arrest may become necessary to clear the road and prevent a continuing offence, no biological samples would be required normally to facilitate investigation. Only physical measurements would be sufficient to record identity. Further, not only has the amended Section 41(1) of the CrPC put limitations on arrest in cognisable offences punishable with imprisonment up to seven years, but the Act also makes a non-obligatory provision for giving biological samples in such cases. Thus, by expanding the scope of measurements, no harm is likely to be done to an individuals’ privacy. Measurements *per se* do not reveal any inculpatory information.

The provision for persons ordered to give security for good behaviour or maintaining peace, the provision regarding refusal or resistance to allow taking of measurements, and the provision relating to the power of the magistrate to direct a person to give measurements for the purpose of any investigation, remain the same as provided for in the IPA.

Though the Act does not explicitly bar taking measurements of juveniles, the provisions of the (Special Act) Juvenile Justice Act, 2015 regarding destruction of records of conviction under the Act, shall apply. Since no disqualification can be attached to a conviction of an offence by a juvenile, no measurement (if taken) can be used for any future reference. The legislature has purposefully avoided the word “arrest” in the entire Juvenile Justice Act. A first information report is to be written only in heinous cases (offences punishable with imprisonment for seven years or more). In all other cases, delinquent juveniles are produced before the Juvenile Justice Board along with a general daily diary report and social background report. The power to apprehend is to be exercised only regarding heinous offence, unless it is in the best interest of the child.

However, it would have been prudent to add a provision in the Act for juveniles for clarity and allay any doubts. Similarly, since the records of juveniles are required to be erased, the period of storage of measurements of adults could have been conveniently reduced by 10 years, as the probability of committing a crime by any person after the age of 80 years is negligible. *The Crime in India – 2020 statistics* published by the National Crime Records Bureau (NCRB) shows that the number of arrested persons over 60 years of age is less than 1.5%.

The Act does not mandate the compulsory recording of all measurements for all types of offences. The measurements shall be taken 'if so required' and as may be prescribed by governments. The purpose is to help the enforcement agencies in the prevention and the detection of crime. The NCRB will store, process, and preserve whatever data is collected by the States and Union Territories. The Crime and Criminal Tracking Network & Systems (CCTNS) data have only helped enforcement agencies across States in matching missing persons with found persons and unidentified bodies, matching lost/stolen mobile phones and vehicles with the recovered ones, tracking habitual criminals and inter-State gangs, etc.

The biological sample of an accused person is required during investigation for comparison with seized body fluids and blood from the scene of crime to establish linkage. Signature and handwriting specimens are taken for comparison with those on disputed or forged documents. Similarly, since fingerprints are unique in nature, latent chance finger impressions lifted from the scene of crime are admitted as clinching evidence in a court of law to establish the presence of the accused. Access to biometrics collected by the Unique Identification Authority of India (UIDAI) has been refused to enforcement agencies on the pretext of 'technology issues' and strict provisions of the concerning law. The matter is pending with the Delhi High Court and the Supreme Court.

The objective of the Act is to facilitate identification and investigation in criminal matters. Enforcement agencies must be allowed to use scientific methods to prevent and detect crime. A number of analytical tools can be applied nowadays to the database of measurements to do predictive policing (which is very common in developed countries). The use of better technology will only help in minimising the probability of errors. The right of an individual will have to be considered in the background of the interests of society. The data proposed to be collected through measurements of convicts and others does not appear to be disproportionate with the stated objectives of the Act.

R.K. Vij is a former Special DGP of Chhattisgarh. The views expressed are personal

[Our code of editorial values](#)

**END**

Downloaded from [crackIAS.com](http://crackIAS.com)

© **Zuccess App** by crackIAS.com