

Letter from the Executive Board

Greetings, dear prospective delegates of the ALL-INDIA STAKEHOLDERS MEET, At the outset, let us congratulate you upon your allotment to the most exciting and unique committee of Orpheus MUN.

While many of you would have probably been a part of Indian Committees/Political Parties Meets, we at Orpheus MUN would like to reiterate to you that the ALL-INDIA STAKEHOLDERS MEET will be like no other. Although it will be slightly challenging for the first-timers, we would assure them that with the help of an appropriate amount of research and confidence, they can be at par with experienced delegates and change the dynamics of this committee. We have tried our best to give you a comprehensive and elaborate background guide, which will help you understand the basic nuances of the agenda. Please make sure that you read the study guides carefully and research them in depth. Since this is not a committee under the UN mandate or does not follow the regular Parliamentary rules of procedure as dictated by Article 105 laid down in the Constitution of India. The delegates will be informed regarding the Rules of Procedure before the commencement of the committee.

With that being said, we would like a proper and constructive debate. The agenda, “Merits of The Criminal Procedure (identification) Bill 2022 in view of Article 21 of the Indian Constitution” requires tough scrutiny, detailed analysis, questioning past decisions and realistic solutions, especially with the onset of advanced technology for our assistance. We at Orpheus MUN expect nothing less than the best from the delegates.

Lastly, to quote Ronald Reagan “For the sake of peace and justice, let us move toward a world in which all people are at last free to determine their own destiny.”

Regards,

THE EB, ALL INDIA STAKEHOLDERS MEET, Orpheus MUN

Introduction to the Agenda

What is Criminal Procedure?

Criminal procedure deals with the set of rules governing the series of proceedings through which the government enforces substantive criminal law. Municipalities, states, and the federal government each have their own criminal codes, defining types of conduct that constitute crimes. Criminal procedure generally concerns the enforcement of individuals’ rights during the criminal process. Examples of procedural issues are individuals’ rights during law enforcement investigation, arrest, filing of charges, trial, and appeal.

What is Criminal Law?

Criminal law deals with offences that are perpetrated against society at large. Criminal law penalises the convicts, safeguards the citizens and makes sure that law and order are followed



The Identification of Prisoners Act, 1920 allows police officers to collect certain identifiable information (fingerprints and footprints) of persons including convicts and arrested persons.^[1] Also, a Magistrate may order measurements or photographs of a person to be taken to aid the investigation of an offence. In case of acquittal or discharge of the person, all material must be destroyed.

There have been advances in technology that allow other measurements to be used for criminal investigations. The DNA Technology (Use and Application) Regulation Bill, 2019 (pending in Lok Sabha) provides a framework for using DNA technology for this purpose. In 1980, the Law Commission of India, while examining the 1920 Act, had noted the need to revise it to bring it in line with modern trends in criminal investigation. In March 2003, the Expert Committee on Reforms of the Criminal Justice System recommended amending the 1920 Act to empower the Magistrate to authorise the collection of data such as blood samples for DNA, hair, saliva, and semen.

The Criminal Procedure (Identification) Bill, 2022 was introduced in Lok Sabha on March 28, 2022. The Bill seeks to replace the Identification of Prisoners Act, 1920

Key Features of the Bill

The Bill expands: (i) the type of data that may be collected, (ii) persons from whom such data may be collected, and (iii) the authority that may authorise such collection. It also provides for the data to be stored in a central database. Under both the 1920 Act and the 2022 Bill, resistance or refusal to give data will be considered an offence of obstructing a public servant from doing his duty. Table 1 compares provisions of the 2022 Bill with the 1920 Act.

Table 1: Comparison of key provisions of the 1920 Act and the 2022 Bill

1920 Act	Changes in the 2022 Bill
Data permitted to be collected	
<ul style="list-style-type: none"> Fingerprints, foot-print impressions, photographs 	<ul style="list-style-type: none"> Adds: (i) biological samples, and their analysis, (ii) behavioural attributes including signatures, handwriting, and (iii) examinations under sections 53 and 53A of CrPC (includes blood, semen, hair samples, and swabs, and analyses such as DNA profiling)
Persons whose data may be collected	
<ul style="list-style-type: none"> Convicted or arrested for offences punishable with rigorous imprisonment of one year or more Persons ordered to give security for good behaviour or maintaining peace Magistrate may order in other cases collection from any arrested person to aid criminal investigation 	<ul style="list-style-type: none"> Convicted or arrested for any offence. However, biological samples may be taken forcibly only from persons arrested for offences against a woman or a child, or if the offence carries a minimum of seven years imprisonment Persons detained under any preventive detention law On the order of Magistrate, from any person (not just an arrested person) to aid investigation
Persons who may require/ direct collection of data	
<ul style="list-style-type: none"> Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above 	<ul style="list-style-type: none"> Officer in charge of a police station, or of rank Head Constable or above. In addition, a Head Warder of a prison

1920 Act	Changes in the 2022 Bill
<ul style="list-style-type: none"> Magistrate 	<ul style="list-style-type: none"> Metropolitan Magistrate or Judicial Magistrate of first class. In case of persons required to maintain good behaviour or peace, the Executive Magistrate

Sources: The Identification of Prisoners Act, 1920; The Criminal Procedure (Identification) Bill, 2022; PRS.

- The National Crime Records Bureau (NCRB) will be the central agency to maintain the records. It will share the data with law enforcement agencies. Further, states/UTs may notify agencies to collect, preserve, and share data in their respective jurisdictions.
- The data collected will be retained in digital or electronic form for 75 years. Records will be destroyed in case of persons who are acquitted after all appeals, or released without trial. However, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.
- The 2022 Act will permit the collection of biological samples, “behavioral attributes”, and reports of any physical examinations of the accused conducted under sections 53 and 53A of Criminal Procedure Code (“CrPC”) dealing, among others, with rape cases.
- Unlike the 1920 Act, the 2022 Act aims to authorize the collection of data from convicts, persons arrested for offences punishable under any law, or those detained under preventive detention laws.

HISTORICAL BACKGROUND

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. 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.

JUDICIAL PERSPECTIVE

The curious case of Section 5

Section 5 of the Act empowers only a magistrate of first class to direct any person to allow his measurements or photograph to be taken. The second provision to this Section ensures that no such direction shall be given unless the person has at some time been arrested in

connection with such investigation or proceeding, thereby acting as an inbuilt safeguard against the discretionary powers of the magistrate. Section 5 of the Bill intends to confer similar powers on a magistrate who, in this case, can also be an executive magistrate where issues of 'public tranquility' and 'good behaviour' are involved. While Section 5 of the Act limits its application to investigations and proceedings under the Code, the Bill expands the application of Section 5 to investigations and proceedings under every law in India. More importantly, the necessary safeguard in the form of the second provision to Section 5 is glaringly missing in the Bill. This omission bestows unbridled discretionary powers on a magistrate who can compel any person to provide 'measurements', even in case of a trivial offence, or where such person's involvement in the given offence has not even been prima facie established.

Violation of Article 20(3)

Section 6 of the Bill makes it lawful for the police to forcibly take 'measurements,' which also include biological samples and their analysis- in case of resistance or refusal. This coercive provision transgresses the right against self-incrimination, a well-established principle of our criminal justice system and mandated under Article 20(3) of the Constitution. Justice VR Krishna Iyer once characterized this right as "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.” This fundamental right does not only protect persons formally accused, but also suspects.

Violation of Article 14

Violation of the right against self-incrimination also bears implications vis-à-vis other fundamental rights. The excessive and disproportionate provisions of the Bill do not pass the test of arbitrariness formulated by the Supreme Court and deserve negation under Article 14. Manifest arbitrariness, in the words of the Court, is “something done by the legislature capriciously, irrationally and/or without adequate determining principle.” The Statement of Objects and Reasons appended to the Bill does not lay down any rationale behind the egregious widening of the scope of the existing provisions, except for an unsubstantiated claim that “this will help the investigating agencies to gather sufficient legally admissible evidence and establish the crime of the accused person.” Wide discretionary powers have been bestowed upon functionaries under the Bill with negligible checks and restraints. As such, the Bill also fails the substantive due process test, which requires every law to serve a legitimate State interest and to be ‘just, fair and reasonable’.

Violation of Article 19(1)(a)

The wide definition of ‘measurements’ also raises vital concerns regarding personal autonomy. Values of autonomy and personal integrity form a component of ‘expression’ protected under Article 19(1)(a) and manifest in the form of independent decision-making and control over dissemination of personal information. An arrested or detained person has the right to turn down a scan of their iris and retina, as it directly interferes with their bodily autonomy and gathers personal information. Personal autonomy can only be restricted by a legislation which is proportionate and informed with due process. The Bill, however, puts serious crimes and minor offences on the same pedestal, which is neither proportionate nor reasonable.

Violation of Article 21

It is well established that the fundamental right to life and personal liberty also enshrines a ‘right against cruel, inhuman or degrading treatment’. Article 21 provides a shield to protect ‘bodily integrity and dignity’, and such protection extends to prisoners, undertrials, arrested persons, detainees in the course of investigation and persons in protection homes. The Bill, in flagrant violation of the law laid down

by the Supreme Court, has clauses which allow significant intrusion into dignity of an individual who may be called in for questioning, or who is involved in the pettiest of offences. Prisoners are especially entitled to a 'fair trial' and 'presumption of innocence'. The Bill, however, is based on presumption of guilt, reeks of reverse onus and betrays a proclivity to treat a person as a suspect and not as a right-bearing individual.

Conclusion

Even Though the amendment has invited nation wide protests, various citizens have found it as a new operationalized way of gathering evidences and for quick judgement and decision as well as Justice.

We look forward for hearing both the sides of the debate.