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A CRITICAL ANALYSIS ON CRIMINAL IDENTIFICATION ACT, 2022

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Abstract

This article discusses the provision of The Prisoners Identification Act, 1920 and The Criminal Procedure (Identification) Act, 2022. In the Article the comparison and differences have been discussed. There are many major changes have been done in the present Act. how the two Acts are different in its application, ambit of persons, and ambit of measurements. The present Act widens the scope of ambit of persons and ambit of measurements in comparison to the old Act. This article critically analyses the provision of the present Act in many aspects and observes the shortcomings implied in the Act. the article provides some suggestion to cure these loopholes and concluded with the requirement of better enforcement of the Act.

Key Words,

The Prisoners Identification Act, 1920, The Criminal Procedure (Identification) Act, 2022, measurement, National Crime Records Bureau, Right to privacy, juvenile delinquents.

Introduction

The criminal justice system is vital mechanism of any civilized society. crime and criminal are inevitable parts of any society. crime is omnipresent in the respect of era and place. It can never be at the stage of absolute elimination. It is just required for criminal justice mechanism to control or minimize the crime with its early detection, protection and in case of commission, the speedy justice to victims. The detection of crime is vital issue in criminal justice system. There are various methods since pre digital era to today's modern advanced digital era. In the detection of crime, the identification of offender who commits the crime or involves in the commission of crime is cornerstone of the criminal justice system. it evolves through gradual advancement of scientific technology in forensics. To regulate this area of identification of offender, there was an Act enacted in 1920, which dealt especially with the fingerprints and

photographic identification of convicted persons. As digital advancement is happening worldwide, police officials or investigating agencies are using technology in the detection of crime, especially in the identification of offender who committed any offence or likely to be committed any offence. Hence, it becomes required to have an updated Act on the subject. Consequently, The Criminal Identification Act, 2022 enacted by Indian Parliament with the object of expansion of ambit of measurement techniques in identification and ambit of persons who may get measured for identification. The Act is very much in the consonance of advancement of forensic science. However, there are many loopholes in the Act which probably overlooked by the law makers. These all issues will be discussed in present Article and analyse the whole Act through various ways.

Brief provisional facts of new Act

This is small Act with 10 sections, in which 5 provisions are most important. The definition clause under section 2 of the Act provides definitions of Magistrate and Measurements. The definition of Magistrate means Metropolitan Magistrate, Judicial Magistrate of the first class and Executive Magistrate. The clause (b) of under section 2 of the Act defines Measurements and includes a wide range of ambit with finger, palm, foot impressions, photographs, iris and retina physical, biological samples, signatures and other behavioural attributes etc. Secondly, it is provided under section 3 of the Act that who shall be the measured by police officer and there are three categories of people who have to allow his measurement when required, these categories are namely, I. convicted person, ii. Who ordered to give security under section 117 of the Code of Criminal Procedure, 1973, iii. Arrested persons. Thirdly, the collection, storing, preservation, sharing, dissemination, destruction and disposal etc. are given to National Bureau of Investigation. The records have to be preserved for the period of 75 years from the date of collection. Fourthly, magistrate has power to direct a person to give measurements under section 5 while section 6 is the penalizing provision in case of resistance or refusal to give measurements. These all are major provision of the Act.

Differences Between Old and New Acts

There are lots of differences between new Act and the old one. These differences are substantive, procedural, and administrative in nature. The new Act substantially widens scope of measurements and ambit of persons who shall be measured compare to the provisions of the old Act. The measure differences are explained in detailed as following.

Firstly, the new Act widens the scope of persons who shall allow his measurement to be taken by police officials. In the old Act, only persons convicted and ordered to give security for good behaviour are required to allow his measurements to be taken by police officials. While in the new Act of 2022 under section 3 it is provided that the person belongs to three categories are required to allow his measurements to be taken by police officials. One is person convicted of any offence punishable by law time being in force, second is person ordered to give security for good behaviour and maintaining peace under section 117 of the crpc, 1973. Another aspect is regarding conviction in offence, the old Act provided a limited scope of convicted person in any offence punishable with rigorous imprisonment for a term of one year or upwards, or any offence which would render him liable to enhanced punishment on a subsequent conviction, while in the present one has no such limitations.

Secondly. The definitional aspect is also very different from the old Act and widens with the enactment of the new Act. In the old Act, the definition of “measurement” under section 2 (a) was limited only to the finger – impressions and foot – print impression and photographs considered differently, while in the new Act of 2022, the definition of “measurements” has wider aspect and includes along with finger – impressions and foot – print impression the palm

– impressions, photographs, iris and retina scan, physical, biological samples and their analysis

behavioural attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of The Code of Criminal Procedure, 1973 that is about medical examination of accused and examination of the same in rape cases to collect evidences.

Thirdly, in the old Act there was no such provision for a specific agency who managed all the measurements collected by police officials. While in the present Act, the provision of a specific agency that is National Crime Records Bureau (NCRB) has been empowered to keep the

records of such measurements. Under section 4, it is stated that the NCRB shall collect the record of measurements from state or Union territory or other law enforcement agencies, store, preserve and destroy the same at national level, process and share such records with law enforcement agencies. NCRB is a centralised agency and functions at national level.

Another major change in the law is about the destruction of record of measurement after 75 years or retaining of the same for a period of 75 years from the date collection of the same. This provision was not mentioned in the old Act. Another change is that where any person who has not been convicted with imprisonment for any term and released without trial, acquitted or discharge and all legal remedies to recourse have been exhausted, the measurements collected shall be destroyed, where areas in the old Act there was destruction of measurements could be taken place in cases of rigorous imprisonment for one year term.

CRITICAL EVALUATION OF THE NEW ACT

The present Act is an updated version of the old Act in accordance with the current developments. These developments are in the terms of technology especially digital and cyber technologies and criminal justice administration system. There are various scientific ways have been innovating to identify the suspected accused involved in the crime. Bio metrics, face recognition technology, behaviour patterns observations are new ways of measurement to identify the accused persons or proposed accused. On the other hand, criminals are indulging in various ways to hide or conceals crime and themselves to run away from the hands of law enforcement agencies. However, concerns arise regarding individual rights and public safety. Efficient detection of crime is key to public safety and law and order, especially in era of digital advancement. Many times, an individual suffers due to inevitable preference given to public safety. Right to privacy, right to life and rights of accused persons are constitutional rights as well as internationally recognized rights. however, here question arises whether this wide way of detection and measurements of person mentioned infringes these mentioned individual rights? in case of wrong persons' measurement have been taken due to coercion or threat, what kind of specific would be available with the victim? the Act is very much silent about that.

Secondly, Central Government through the agency of National Crime Records Bureau has

centralised the procedure and takes control over data regarding measurements of persons which is also the main concern of right to privacy and concerns arises protection of collected data from hackers and online fraudsters.

Thirdly, the Act is also silent on the issue of juvenile delinquents, whether section 3 of the Act includes in “Any person” juveniles or not, that is the main question of concern regarding child rights. According to the Juvenile Justice Act, 2015, under section 24 provides removal of disqualification on the findings of an offence and the Board shall direct the police officials to destroy all relevant records of such conviction. However, here the Act is silent on this issue and leaves ambiguity and space for violation of child rights.

Fourthly, the Act covers broadly all kinds of persons who comes under the eyes of police officials these are convicted or arrested for any offence punishable with imprisonment. However, there may be some kind of offences which are somewhere civil in nature and prone to be misused like section 498A, 496 etc. of the Indian Penal Code, 1860. There is possibility of violation of right to privacy of an individual and his or her dignity in case of false complaint, malicious prosecution, and acquittal. Also, in cases of wrongful confinement and politically motivated uses of preventive detention laws are issue of major concern.

SUGGESTIONS

First the Act must specify in what kind of offences and at what stage the person specified under section 3 of the Act can be ordered to give measurement under section 5 by the Magistrate. Secondly, the Act need clarifications regarding measurements of juvenile delinquents. Thirdly, the Act must have some safeguards for data collected by protection National Crime Records Bureau. Fourthly, the decency and dignity must be taken in to consideration while measuring of persons especially for women.

CONCLUSION

In the view of above analytical discussion, it has been observed that the new Act is very much pertinent to today’s world of digital era and technological advancement in which technology not only useful for good purposes but also weapon of miscreants for committal of crimes.

Hence, it is inevitable to have an Act which is in consonance with technology and have various modes to detect criminals. However, there are many loopholes which need to be cured by

removal of doubts and amendments in the Act. the application of the provision of the Act must be accordance with the principles and spirit of the constitution.

Reference

The Prisoners Identification Act, 1920,

The Criminal Procedure (Identification) Act, 2022

The Code of Criminal Procedure, 1973

Juvenile Justice Act, 2015.

