

Criminal Procedure Identification Bill, 2022

Vilasini¹ was pregnant while she was unmarried. When kunhiraman's name appeared in the birth register, he denied paternity. With the application of DNA testing, the court ruled in favour of vilasini and entitled her the claim of maintenance. The year was 1991, and this became one of the earliest examples of cases requiring use of forensic science like DNA testing. It became one of the prime examples of the acknowledgement of forensic sciences in criminal investigation.

The crime rates since then have shown an upward trend, and the year is 2022. 'Change is the only constant', Hence it is provided that the systems of justice also need to incorporate the changing technology under its ambit.

The new criminal procedure identification bill, 2022 seeks to increase the rate of conviction by introduction of newer tools for forensic analysis.

Background:

On 6th April 2022, the parliament passed the bill on Criminal procedure identification, which replaces the previous Identification of Prisoners Act, 1920.

The ruling party claims the bill as an attempt to build on the concept of smart policing as referred to by the prime minister in his 2014 speech.²

How was the earlier law insufficient?

Expert Committee on Reforms of the Criminal Justice System, 2003, in its report highlighted that two major problems surrounding the Criminal Justice System are, large number of pending criminal cases and the inordinate delay in disposal of criminal cases on the one hand besides the very low rate of conviction in cases involving serious crimes.

[A recent survey conducted by the Supreme Court of India and the High Court of Delhi revealed that very few cases are solved with the involvement of forensic evidence.](#)

Thus, the report stresses on the need to introduce better infrastructure and legal ramifications required to introduce the use of forensics for investigation of crime. The report also points towards lack of coordination between the sub-systems and other agencies involved as one of the difficulties for

¹ [Vilasini case](#)

² [speech](#)

investigating officers. Political and executive interference were also one of the hurdles for such investigating officers.

Aim:

The bill aims to refine the previous act of 1920, based on the recommendations of the Expert Committee on Reforms of the Criminal Justice System, 2003.

Although the act of 1920 also made use of forensic instruments to investigate criminal cases, the new bill mandates usage of such instruments at an early stage to trace evidence in a more efficient and timely manner.

The bill calls for storage of such forensic information under NCRB, hence streamlining the investigation through creation of a national database.

‘About 7,50,000 cases are closed in India every year due to lack of evidence’, Is forensic science the solution to the problem?

The Criminal Procedure Identification Bill, 2022 aims to extend the previous definition of measurements (included in the Identification of prisoners act, 1920) to aid investigation.

The new bill includes measurements for identification such as iris and retina scan, biological samples, and their analysis, behavioural attributes including signatures, handwriting, and examinations under sections 53 and 53A of CrPC (blood, semen, hair samples, and swabs, and analyses such as DNA profiling) in addition to previous measurements of recording fingerprints, footprint impressions and photographs.

How is the bill different from the Identification of Prisoners Act of 1920?

Apart from the extension of the definition of measurements in the bill, several other features of the include:

Collection of measurement from:

1. A person arrested for any offence. However, biological samples may be taken only in case of an offence committed against a woman or a child, or if the offence carries a minimum of seven years’ imprisonment
2. Persons detained under any *preventive detention law*

3. By the order of the magistrate, from any person (not just an arrested person) to aid the investigation
4. Persons ordered to give security for good behaviour or maintaining peace

The act of 1920, allowed recording of measurements of convicted and unconvicted persons only if the punishment involved imprisonment for one year or above or through the order of magistrate to aid the investigation.

Who will collect the measurements?

The Investigating officer, an officer in charge of a police station, or rank Sub-Inspector or above, previously collected such measurements.

However, the new bill includes the collection of the measurements by an officer in charge of a police station, a Head Warder of a prison, or Head Constable or above.

Who will keep the records?

NCRB (National Crime Records Bureau) is the agency responsible for maintaining all measurements and data. However, it may share the data with other ***law enforcement agencies*** upon request. The State Government and Union territory Administration may notify the appropriate agency to collect, preserve and share the measurements in their respective jurisdictions.

The data collected will be stored in digital or electronic form for 75 years. Data of Persons who are acquitted after all appeals or released without trial is destroyed.

How will the data be used?

Mr. Amit Shah in his lok sabha speech also addressed the framework for implementing the bill. The framework includes the formation of the National automated fingerprint identification system, the software of which is being used on a trial basis at the moment. The software already has records of around 1 crore fingerprints. This data will be accessible only to NCRB, and no other law enforcement agency. Sharing of forensic data will take place through Crime and Criminal Tracking Network & Systems (CCTNS). CCTNS is referred to as the IT pillar of the criminal justice system.

CCTNS provides the framework of network infrastructure under the E- governance initiative of the government to investigate and detect criminals. The information driven by states and its police centres

will be shared through this network. The data will then be analysed by the central agency, NCRB and only the results will be shared to the law enforcement agency as required.

In the UK, such forensic information is stored under the National DNA Database (NDNAD). The UK National DNA Database Strategy Board is responsible for making policy decisions regarding the functioning of the database. The chief constable submits the samples in the database and has the power to take decisions on retention or deletion of records.

Similarly in the US, such forensic data is stored under the National DNA Index System (NDIS) which is a part of Combined DNA Index System. The access to such a database is given to Federal, State and local crime laboratories performing DNA analysis.

Problems:

One problem that the opposition points towards in the bill is its violation towards the fundamental ***Right to Privacy***. The bill not only empowers the collection of data from convicted persons, but also of any person to aid the investigation.

While the government promises to keep such information safe under the national database, the bill does not mention the procedures and code of conduct in case of breach of data and rights of the data subject.

The National Police Commission in its 3rd Report, referring to the quality of arrest by the police in India had mentioned that power of arrest was one of the chief sources of corruption in the police.

The bill empowers the magistrate to order an investigation within its ambiguous phrase of “*any person arrested, in any connection*” with the case. The act does not require the magistrate to record reasons for such an order.

Expert Committee on Reforms of the Criminal Justice System, 2003 noted that, ‘The nature of crimes and the way to deal with them calls for a multidisciplinary approach. Social, psychological and economic causes contribute to the occurrence of crime and, therefore these causes must be borne in one’s mind in dealing with crimes.’

The bill empowers to take biometric samples regardless of the degree of offence except in cases requiring the collection of DNA samples. However, even the exception does not clearly define the degree of the offence.

While the bill attempts to streamline investigation through creation of a national database, the collection of data and its preservation and storage, its rules and procedures still remain a state subject and does not eliminate the possibility of political interference. This then seems to nullify the above mentioned objective.

What are other countries' laws regarding criminal identification?

The bill is just another step forward in keeping up with the present use of technology in criminal investigation when such measures are already in place in several other nations such as the US and UK.

In the case of the US, while federal law calls for collection of measurements, each state has its own set of rules concerning criminal procedure. For example, The state of California also mentions the procedure of collection of biometric data. It also mentions authority of supervisor and use of videotaping while recording such measurements.

While UK's law also calls for collection of measurements and retention of data, UK's bill is also accompanied by guidelines and procedures for collection of measurements, guidelines on sharing of data and its operation in case of breach of data under data protection bill. The notification about data breach has to be given and adequate measures need to be taken to mitigate the risks. The unavailability of such guidelines and bills might become one of the drawbacks of this bill.

Conclusion:

The opposition expressed various apprehensions over the collection and recording of data that may be exploited. However, the ruling party addressed these apprehensions, clarifying that the records will be kept safe in a national database. This will also be followed by keeping records of time and the type of file shared with the agency.

This bill attempts to empower the criminal justice system to tackle the next generation of crime, as said by the Home Minister Amit Shah. He also highlighted the government's efforts to digitise the criminal justice system.

His speech concluded that the investigation should take place according to the technology required and thus, classification of the degree of offence is not required. This would also restrict third-degree treatment for investigation.

Recommendations:

The bill must be accompanied by a further set of guidelines concerning rules of collection of biometric samples. The collection of such biometric samples must be taken under the presence of a supervisory authority and adequate instruments of accountability to ensure better transparency.

The criminal arrest should be classified according to the degree of offence to undertake a multidisciplinary approach for dealing with crime.

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