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**THE LEGAL IMPLICATIONS OF THE CRIMINAL PROCEDURE
(IDENTIFICATION) ACT, 2022:**

**A Comprehensive Analysis of Constitutional, Criminal, and
Forensic Dimensions**

Shaifali Dixit & Chandrika

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THE LEGAL IMPLICATIONS OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022: A Comprehensive Analysis of Constitutional, Criminal, and Forensic Dimensions

Shaifali Dixit & Chandrika***

[Abstract: *The Criminal Procedure (Identification) Act, 2022 is enacted with an object to authorise the investigating authorities for taking measurements of accused, undertrial prisoners as well as convicts and for the purposes of identification and investigation in criminal matters and to preserve these records. Before the enactment of this Act, the other enactments like Identification of Prisoners Act, 1920 and Code of Criminal Procedure, 1973 provided several provisions for the collection of various types of biological and physical samples. The current statute aims to authorise investigating authorities to use current technology and investigative procedures to investigate crimes by collecting confidential and genetic data of the accused, undertrial prisoners, convicts, and maintaining a database for up to 75 years. The statute further allows for the taking of measurements, including a person's biometrics, as well as physical and biological samples, palm prints/footprints/finger impressions, iris, and retina scans, signatures, handwritings for the purpose of identification, investigative use as well as production of evidence. Despite having a thoughtful legislative intent behind this legislation at its core, the legality, feasibility, and procedural applicability of the Criminal Procedure (Identification) Act, 2022 is still debatable on several issues. This legislation may fail on certain criteria. For Instance, First if a sufficient data protection framework will not be formulated; second, if the infrastructure of forensic and scientific laboratories is not expanded; and, third, if qualitative and frequent training of investigating officers is not conducted. Moreover, the legislation is also questioned on the aspect of ambiguity of certain provisions as to what extent these measurements can be collected and whether the procedural safeguards and the accountability of dealing agencies are still undefined etcetera. The constitutionality of the Act is challenged on the ground of violating the right to equality under Article 14, the right against self-incrimination under Article 20(3) and the right to privacy under Article 21 of the Indian Constitution.*

The paper aims at thoroughly examining the efficacy, legality, and constitutionality of the Criminal Procedure (Identification) Act, 2022 and its interaction with other laws that currently govern the field. It further aims at assessing the issues arising from the Act,

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speaking to questions of science, regulation, procedural impediments, and administrative aspects of practical implementation of this Act.]

I

Introduction

Investigation and trial in criminal cases are conducted with the express purpose of discovering the truth as well as administering and upholding the ends of justice. The truth can only be discovered through a fair, just, and proper investigation, which is the cornerstone of a fair trial. The Court must make a sincere effort to determine the location of the truth in every lawsuit. The purpose of the entire legal system is to ascertain the genuine truth.¹ The responsibility and legal duty of judges at all levels must be committed to delivery of justice through the process of finding truth with the help of advanced technologies in the contemporary era. Only when people are satisfied that justice is founded on truth, the judicial system will gain public trust. As reiterated in several judgments by the Hon'ble Supreme Court, every trial is an exploration in which the search for the truth takes place.² Dealing with crime or taking preventive measures against the occurrence of crime takes up a large portion of society's resources.³ The predominance of crime-related worries also suggests that crime has wider ramifications that affect many different aspects of society. While it is undeniable that technology has various advantages in crime prevention, it is essential to recognize that it also entails a few drawbacks that necessitate identification given the complex connection between high-tech society and crime.

Emerging technologies and their potential impact on the Criminal Justice System: A theoretical introspection

The "opportunity theory" of crime is one reason for why crime is more prevalent in high-tech societies. According to this idea, crime is more likely to happen when there is an opportunity and no supervision or guardianship.⁴ Technology developments have opened up new possibilities for criminal activities, including cybercrime, identity theft, and online fraud. The ability to plan and carry out crimes

¹ *Pooja Pal v. Union of India*, (2016) 3 SCC 135 (India).

² *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 (India)

³ David Canter, Donna Youngs, *Crime and Society*, 11 CSS 283 (2016), available at: <http://dx.doi.org/10.1080/21582041.2016.1259495> (last visited 05 May, 2023).

⁴ Tommy K. H. Chan and Christy M. K. Cheung, *Cyberbullying on Social Networking Sites: The Crime Opportunity and Affordance Perspectives*, 36 JMIS 574 (2019), available at: <https://www.tandfonline.com/doi/epdf/10.1080/07421222.2019.1599500?needAccess=true> (last visited 05 May, 2023).

while staying anonymous and untraceable has also been facilitated by technology. The "social disorganisation theory" is another justification for the link between crime and high-tech society communities that experience a breakdown in social order and cohesion are more likely to experience crime. The fragmentation and isolation of communities brought on by technological advancements has made it simpler for criminals to operate undetected.⁵ Technology and science have changed the globe as a whole and crime and restrictions have gone up. The connection between crime and high-tech society is a complicated problem that necessitates a nuanced and multidisciplinary strategy. New assessment methods are being used by developed nations all over the world to produce accurate findings. For instance, advanced analytics and data mining techniques can assist law enforcement organisations in identifying and apprehending criminals, while surveillance technology can be used to monitor and discourage criminal behaviour.⁶

It is also to be understood that '*Salus populi suprema lex*', which means welfare of people is supreme and '*Salus republicae suprema lex*' which means welfare of republic is supreme, coexist and are not only significant and pertinent, but also form the basis of the idea that an individual's welfare must take a backseat vis-à-vis the welfare of a community.⁷ The collaborative purpose of safety will be compromised if offenders are cleared because the evidence against them is to be treated as though it did not exist. The method of apprehending offenders needs to be improved with the times. On one side the technology can be employed to reduce and avoid crime and on the other side the technology can also be used to empower and teach the investigating agencies to detect crime. As they continue to explore methods to use technology to prevent and lessen crime, philosophers, criminologists, and sociologists will continue to argue over the effects of technology on society and crime.

Nowadays the criminals are using advanced scientific and cyber technologies to commit various crimes, therefore the updated legislations, rules, and regulations must be enacted to deal with the abuse of scientific technologies for commission of such crimes. Since law is a dynamic topic, it must adapt to the times. One initiative towards bringing a change in this direction includes replacement of the Identification of Prisoners Act, 1920 by Criminal Procedure (Identification) Act, 2022. On March 28, 2022, the Criminal Procedure (Identification) Bill, 2022 was passed by the Lok Sabha with the goal of authorizing the recording and saving of measurements of inmates, convicted and accused for the purposes of identity and

⁵ Kubrin, Charis and Weitzer, Ronald, New Directions in Social Disorganization Theory (2003) available at: <https://ssrn.com/abstract=2029097> (last visited on 25th May, 2023).

⁶ Chan, Janet and Bennett Moses, Lyria, *Is Big Data Challenging Criminology?* available at: <http://dx.doi.org/10.2139/ssrn.3742536> (last visited on 25th May, 2023).

⁷ *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172 (India).

inquiry in criminal cases.⁸The extent of the measurements that can be collected has been redefined and expanded by the 2022 Act. The DNA Technology (Use and Application) Regulation Bill, 2019 which was passed in previous years establishes a framework for employing DNA technology for dealing with crime and related issues, which is considered as the gold standard for crime investigation.⁹ By allowing the use of DNA evidence, it is assumed that it will benefit the implementation of criminal justice effectively. Every law is intended to benefit society in the long run. This law is the first amendment to the Identification of Prisoners Act of 1920 in that regard, which came into effect 102 years ago.

A significant reason that this law is brought in force is due to India's never declining crime rate owing to the absence of proof pertaining to the offender, which ultimately caused delay in the inquiry and the identification of the actual criminal. It was discernible that the Identification of Prisoners Act, 1920 did not assist law enforcement agencies and officials efficaciously.¹⁰

When reviewing the 1920 Act in 1980, the Law Commission of India, in its 87th Report on *Identification of Prisoners Act, 1920* remarked that it needed to be updated to reflect contemporary developments in criminal investigation.¹¹ The Law Commission Report also points out that the numerous changes that several States have made to the Act show the need for an update.¹² Additionally, other types of "measurements" that can be used by law enforcement organizations for investigations were also considered to be necessary in light of recent forensic breakthroughs.

It was also deemed essential to broaden the range of people whose measurements could be obtained because doing so would enable investigation agencies to compile enough legally admissible evidence and prove the accused person's guilt.¹³ The measure will benefit both our investigation agencies and the prosecution process. Additionally, there is a possibility that this will lead to a rise in course judgement

⁸ Vijaita Singh, *Explained | How does the new Criminal Procedure (Identification) Bill, 2022 propose to collect sensitive data?*, *The Hindu*, (April 03, 2022) available at: <https://www.thehindu.com/news/national/explained-how-does-the-new-criminal-procedure-identification-bill-2022-propose-to-collect-sensitive-data/article65284506.ece> (last visited on 15 May, 2023).

⁹ Press Information Bureau, GOI, Ministry of Science & Technology, *The DNA Technology (Use and Application) Regulation Bill – 2019 introduced in Lok Sabha*, (08 Jul., 2019) available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577738> (last visited on 25th May, 2023).

¹⁰ The Identification of Prisoners Act, 1920.

¹¹ Law Commission of India, 87TH Report on Identification of Prisoners Act, 1920, available at: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080866.pdf> (last visited on 31st March, 2023).

¹² *Id.*

¹³ *Id.*

rates. However, the extent of this possibility needs to be examined by scrutinizing the increase or decrease in crime rate in the upcoming reports of the National Crime Record Bureau.

II

Exploring the Socio-Political Factors that led to the emergence of New Laws: Understanding the Outcomes and Implications

Prior to this, the Identification of Prisoners Act of 1920 authorized police agents to gather certain traceable information like fingerprints and footprints from individuals, including prisoners, and detained individuals.¹⁴ On the other hand, Criminal Procedure (Identification) Act 2022, defines “measurements” as finger impressions, palm print impressions, footprint impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to under Sections 53[3] and 53-A[4] of the Code of Criminal Procedure, 1973.¹⁵ The 2022 Act also permits measurements to be taken on all criminal defendants, people who have been arrested, and people who have been placed in custody pursuant to preventive detention legislation, regardless of the severity of the penalty meted out. It provides legal authority to anyone who is under a duty to gather accurate body measurements and specifies that the information be kept with the National Crime Records Bureau (NCRB).¹⁶ Hence, the 2022 Act not only redefines and broadens the scope of the data that may be taken but the applicability on the kinds of individuals has also been elongated. Furthermore, it is expected to boost the effectiveness and timeliness of criminal investigations, help to raise the conviction rate, defend the human rights of millions of law-abiding residents, and convey a robust message to the public.

Despite an emphasis on technical progress in criminal investigation, the 2022 Act has several significant basic concerns that are powerful grounds for challenging its validity, feasibility, and applicability. The legislation violates the basic rights of

¹⁴ The Identification Of Prisoners Act, 1920, S. 3; Taking of measurements, etc., of convicted persons.—Every person who has been— (a) convicted 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; or (b) ordered to give security for his good behaviour under Section 118 of the Code of Criminal Procedure, 1898 (5 of 1898), shall, if so required, allow his measurements and photograph to be taken by a police officer the prescribed manner.

¹⁵ Criminal Procedure (Identification) Act, 2022. S. 2(1)(b).

¹⁶ Criminal Procedure (Identification) Act, 2022. S. 4(1).

inmates, convicts and accused under the veil of identification and inquiry, and therefore invades their privacy.

It's noteworthy to note that this move was inspired by the case *State of U.P v. Ram Babu Misra*¹⁷ in which the Hon'ble Supreme Court emphasised the necessity of amending this statute. The need to change the Act to add "palm impressions," "specimen of signature or writing," and "specimen of voice" as measuring metrics was stated in the first set of recommendations where second set of recommendations discussed the necessity of allowing measurements to be performed for instances other than those covered by the Code of Criminal Procedure.¹⁸

In March 2003, the Expert Committee on Reforms of the Criminal Justice System, chaired by Dr. Justice V. S. Malimath, also advised changing the 1920 Act so that the Magistrate could approve the gathering of information from hair, saliva, and semen samples as well as blood samples for DNA testing and profiling.¹⁹

III

Major Issues Concerning the Legality and Practical Implementation of The Criminal Procedure (Identification) Act, 2022

Despite having a thoughtful legislative intent behind this legislation at its core, the legality, feasibility, and procedural applicability of the Criminal Procedure (Identification) Act, 2022 is still debatable on several issues, some of which directly contradict the basic human rights as well as fundamental rights of the accused, undertrial prisoners and convicts. Other issues are also serious as in this geopolitical war situation; any data breach to enemy countries might prove to be dangerous to us only.

¹⁷ *State of U.P. v. Ram Babu Misra*, 1980 AIR 791 (India).

¹⁸ Trishee Goyal, *What is the Criminal Procedure (Identification) Act, 2022?* THE HINDU (August 11, 2022) available at: <https://www.thehindu.com/news/national/explained-what-is-the-criminal-procedure-identification-act-2022/article65757554.ece> (last visited on 11 May, 2023).

¹⁹ Ministry of Home Affairs, Expert Committee on Reforms of The Criminal Justice System, 2003 available at: https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (last visited on 20 April, 2023).

Several Terms and Phrases used in the Act are Ambiguous

The Criminal Procedure (Identification) Act has replaced the Identification of Prisoners Act which was an age-old legislation of 1920.²⁰ Undoubtedly the recent Act has considerably increased the scope and reach of the investigation process according to the emerging technological advancements and changing dimensions in modus operandi of criminals. But there are certain ambiguities in the current legislation where challenges in interpretation might occur while applying the provision in operation. Section 2 (1) (b) of the Act states that "measurements" includes biological samples and their analysis, behavioural attributes.²¹ The phrase 'biological samples' is not described; hence, it could involve bodily invasions such as drawing of blood and hair, collection of DNA samples.²² There is no further explanation inserted to the provision to circumscribe the limit of extraction of such biological samples. Moreover, the Act does not prescribe the process or the definite framework as to how the measurements taken would be used for analysis and further utilised in a criminal investigation.

Further, the term 'analysis' used in the context of measurement is ambiguous, undefined, and vague. It is uncertain and vague that up to what extent such measurements can be analysed and how much and what kind of data can be generated by means of such analysis. The measurements could be both, case specific or vague which would imply a blanket approval to collect any kind of biological sample from the accused or undertrial prisoners of any offence. The scope of provisions given under this Act is limited to the collection of measurements for identification and investigation purposes and thus, the analysis of these measurements is a black hole that travels beyond the permissible scope of the law.

Another phrase in Section 2 (1) (b) states that 'measurements' includes behavioural attributes.²³ Now again the phrase 'behavioural attribute' is a vague expression which has an unlimited and undefined scope of interpretation. It creates certain operative ambiguities in regards to the concerned person to measure behavioural attributes. It is undetermined whether police personnel or, a forensic psychologist, or a licensed psychiatrist or merely a certified counsellor will take such measurements. Moreover, what may amount to behavioural attributes is a question mark for interpretational challenge. In terms of Forensic Psychology, the tests like

²⁰ The Identification of Prisoners Act, 1920, S. 3.

²¹ The Criminal Procedure (Identification) Act, 2022, S. 2 (1) (b).

²² Subhash Chandra Singh, *DNA Profiling and the Forensic Use of DNA Evidence in Criminal Proceedings*, 53 (II) JILI 202 (2011) available at: <https://www.jstor.org/stable/43953503> (last visited 12 May, 2023).

²³ Vivek Yadav, Kirti Vashisth, *Criminal Procedure Identity Bill 2022: New Theories Revealed*, VII, | IJIRT, 839 (2022) available at: https://ijirt.org/master/publishedpaper/IJIRT154649_PAPER.pdf (last visited 10 March, 2023).

Polygraph, Brain mapping, and Narco Analysis are conducted with an aim to observe the physiological changes to assess the psychology, behaviour, and veracity of the truthfulness of the statements given by the accused. Therefore these tests are impliedly covered under the ambit of taking measurements of behavioural attributes of a person.

Criminalizing the Refusal to give Measurements Raises a question of Violation of Right to Privacy and Right against Self Incrimination

The tests like polygraph, brain mapping, and narco analysis are conducted with an aim to assess the psychology, behaviour, and veracity of the truthfulness of the statements given by the accused and are therefore testimonial in nature.²⁴

This Act has permitted intrusion in the physical autonomy of the person by making refusal or resistance to give measurements a criminal offence. Numerous international declarations support the non-interference in physical autonomy of a person over his own body to which India is also a signatory.²⁵ Section 53 of Code of Criminal Procedure²⁶ as well as The Identification of Prisoners Act, 1920²⁷ permits police authorities to collect the necessary measurements and biological samples from the accused and criminalise resistance or refusal in certain offences like Rape and Sexual offences.²⁸ But the current 2022 Act aggravates the coercion by including all types of detenu within its scope. Such intrusion conflicts with physical autonomy and further violates the right to privacy of an individual which is a fundamental right under Article 21²⁹ as laid down in *Justice K.S. Puttaswamy v. Union of India*³⁰.

Selvi v. State of Karnataka is a well settled precedent in which the Apex court has widen the ambits of protection against self-incrimination of accused and made obligatory to ask the consent of the accused for the administration of these scientific tests as well as to enlighten the subjects with the procedure and repercussions of the test.³¹ After thoroughly examining the proviso of Section 3³², Section 5³³ and Section

²⁴ A.S. Dalal and Arunava Mukherjee, *Constitutional and Evidentiary Validity of New Scientific Tests*, 49 JILI 534 (2007) available at: <https://www.jstor.org/stable/43952091> (last visited 10 Jun. 2023).

²⁵ Universal Declaration of Human Right, 1948, Art. 12, Also see European Convention on Human Rights, Art. 8, International Covenant of Civil and Political Rights, Art. 17.

²⁶ The Criminal Procedure Code, 1973, S. 53.

²⁷ The Identification of Prisoners Act, 1920, S. 6.

²⁸ The Indian Penal Code, 1860, S. 375

²⁹ The Constitution of India, Art. 21.

³⁰ *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 (India).

³¹ *Selvi v. State of Karnataka* 2010(7) SCC 263 (India).

³² The Identification of Prisoners Act, 1920, S. 3.

³³ The Identification of Prisoners Act, 1920, S. 5.

6³⁴ of the Act it is pertinent to note that it is not obligatory to ask for the consent of those accused that have been alleged to have committed an offence punishable for more than 7 years or an offence committed against a woman or child. The magistrate may direct such persons to allow the collection of measurements by the police officer through an order. Any resistance caused by such persons while the collection of such measurements shall be treated as an offence under Section 186 of Indian Penal Code and the person may be punished accordingly.³⁵

Section 3 (c) of the Act specifies that measurement to be taken by a police officer or a prison officer in such a manner as may be prescribed by the Central Government or the State Government. However, a skilled expert is required to extract certain biological samples such as blood, hair, body serums and psychological attributes.³⁶

Infrastructural Issues Concerning the Collection, Preservation and Destruction of Data of Records

The Act has prescribed bodies like NCRB and Forensic Science Labs for collection, preservation, dissemination, and destruction of samples.³⁷ Now, the major impediments in the process are the structural capacity of NCRB and a very scarce number of fully equipped as well as technologically advanced forensic science Laboratories.³⁸

The Act prescribes NCRB as an authorized body for the collection and preservation of records of measurements as per the manner prescribed by the concerned Government or any other law enforcement agencies.³⁹ However, NCRB is well equipped to work as a repository of data of crimes and records of criminals but there is no designated specialized division in NCRB which is fully equipped to collect and analyze biological or forensic samples. The exclusive option left with NCRB is to delegate the function of analysing and preserving such records to the Central and State Forensic Science Labs.⁴⁰ These labs are extremely restricted in number⁴¹ and seeing the enlarged scope of persons covered under this Act, there is an operational challenge in collecting such measurements, analysing such samples and preserving such records for a prolonged time span of 75 years.

³⁴ The Identification of Prisoners Act, 1920, S. 6.

³⁵ The Indian Penal Code, 1860, S. 186.

³⁶ The Criminal Procedure (Identification) Act, 2022 S. 3

³⁷ The Criminal Procedure (Identification) Act, 2022, S. 4

³⁸ Organisational Structure of Directorate of Forensic Science Services and CFSLs, *available at*: <http://dfs.nic.in/organizationalStructure.html> (last visited 10 Jun. 2023).

³⁹ The Criminal Procedure (Identification) Act, 2022, S. 4.

⁴⁰ Forensic Sciences Institutions, *The Directorate of Forensic Science Services, available at*: <http://dfs.nic.in/aboutCfsl.html> (last visited 8 Jun. 2023).

⁴¹ *Id.*

Moreover, it is fundamental for the forensic and biological laboratories to guarantee appropriate quality measures and quality checks while managing the collection of biological samples and their analysis and the process must ensure the highest degree of care, caution and standard. Therefore, it is essential to ascertain the accountability of a prescribed person or body that would be responsible for collecting such measurements which are sensitive in nature, deals with body fluids, and is at higher risk of quality being depreciated due to lack of care and caution.

Data Protection Challenges in Storage, Handling and Safeguarding of Data

The storage and handling of data also raises further concerns regarding the means by which the collected data will be preserved, shared, disseminated, and destroyed. Section 4(2) of the Act clearly indicates that the record of measurements such as finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, forensic reports of biological samples after their analysis including the DNA samples shall be retained in digital or electronic form for a period of 75 years from the date of collection of such measurement.⁴²It creates a plethora of issues concerning the preservation of such data in the digital form and its safety issues. These measurements are exclusively personal in nature and must be kept and stored in the form of digital data without any apprehension of breach of privacy of the concerned individual, but the biggest challenge is that there is no stringent and effective statutory framework for data protection in India.⁴³

In 2017, the Supreme Court ruled right to privacy as a fundamental right and directed the government to implement a robust regime for data protection.⁴⁴ Since then, several proposals of relevant legislation have been drafted and have undergone parliamentary as well as public debate. The Digital Personal Data Protection Bill was put forward for public consultation in November, 2022, and Digital Personal Data Protection Act, 2023 was passed in August 2023.⁴⁵ But the Act is not covering all the aspects of robust data protection framework exclusively required in regard for the data saved with NCRB as prescribed in The Criminal Procedure (Identification) Act, 2022. The accountability of data Protection is on the 'Data Fiduciary' and 'Data Processor' under Digital Personal Data Protection Act, 2023. 'Data Fiduciary' is the one who determines the purpose and means of processing of personal data and 'Data Processor' is the one who processes personal

⁴² The Criminal Procedure (Identification) Act, 2022, S. 4.

⁴³ Shiv Shankar Singh, *Privacy and Data Protection in India: A Critical Assessment*, 53 IV JILI 667 (2011) available at: <https://www.jstor.org/stable/45148583> (last visited 8 May. 2023).

⁴⁴ *Id.* at 669.

⁴⁵ The Digital Personal Data Protection Act, 2023.

data on behalf of a Data Fiduciary.⁴⁶ Since the Criminal Procedure (Identification) Act does not precisely prescribe any specific appropriate agency to collect, preserve and share the measurements, therefore, it will be difficult to comprehensively cover and ascertain all the authorities and bodies collecting, analysing and storing the measurements, under the definition of 'Data Fiduciary' and 'Data Processor'.⁴⁷ Moreover, the accused, under-trial prisoners and convicts do not fit within the scope of 'Data Principal' which means the individual to whom the personal data relates because the 'Data Principal' is the one who willingly submits his personal data to the 'Data Fiduciary' for a particular purpose, whereas the measurements and personal specifications collected under The Criminal Procedure (Identification) Act, 2022 are taken by the force of law.⁴⁸ It is imperative to protect citizens' privacy, prevent governments from indiscriminately collecting data, and holding governmental agencies accountable for data breaches to incentivize appropriate data handling and adequate investments in cyber security.⁴⁹ In absence of any concrete legislative provision for data protection, there will be no accountability of NCRB though being a government agency in case of any theft, breach, or duplicity of the record of measurements shall be retained in digital or electronic form for a period of seventy-five years. Therefore, the data being very sensitive in case of the records of hard-core criminals and exclusively personal in the form of finger impressions, DNA test reports of the individuals shall face security challenges for a prolonged period of 75 years.

Scientific Expertise, Accuracy and Reliability Issues of Biological and Psychological Measurements

Measurements under the Criminal Procedure (Identification) Act, 2022 cover a lot of specimens including fingerprints, palm-print impressions, foot-print impressions, iris, retina scans, physical and biological samples, individuals' signatures and handwriting among various other measurements.⁵⁰ There are several unaddressed concerns regarding the collection of these samples, scientific reliability of analysis of these measurements, and accuracy of certain stored measurements like fingerprints, handwriting etcetera within the prolonged period of 75 years. Even the Apex court of India has recognized several times that analysis of handwriting as not to be an exact science since handwriting can change under several kinds of

⁴⁶ The Digital Personal Data Protection Act, 2023, S 2.

⁴⁷ The Criminal Procedure (Identification) Act, 2022, S. 4.

⁴⁸ The Digital Personal Data Protection Act, 2023, S 2(j).

⁴⁹ Cristian Alonso, TanujBhojwani, Emine Hanedar, Dinar Prihardini, Gerardo Uña, and Kateryna Zhabska, *Absence of Data Protection Law in India Poses Privacy Risk: IMF Paper* (2023) available at: <https://indianexpress.com/article/business/economy/absence-of-data-protection-law-in-india-poses-privacy-risk-imf-paper-8573983/> (last visited 10 May, 2023).

⁵⁰ The Criminal Procedure (Identification) Act, 2022, S. 2(b).

situations, circumstances, or with no specific reason as well.⁵¹ Due to the aforesaid reason, the Supreme Court does not accept handwriting analysis as direct evidence and but only as an opinion evidence. Other irrelevant measurements like palm prints or footprints are also not considered as an exact science. Talking about fingerprints, a recent study shows that fingerprints can also change in some cases, so their reliability also diminishes.⁵² All the other scientific measurements included in Criminal Procedure (Identification) Act, 2022 will come to benefit only when they are collected and then if some crime occurs then the newly collected data will be compared with the old data by the forensic expert. Here lies the problem that if the expert makes some mistake, who will check the capability, knowledge or efficiency of the expert. There should be an availability of a requisite number of forensic experts as well, as according to NCRB, the crime rates in India are increasing with every passing year.⁵³

The nature of these measurements taken may complicate the investigation and identification in practical applicability of scientific techniques for analysis of collected samples. Comparison of writing samples of subject and questioned documents is often fraught with errors. The experts in several studies have observed that handwriting examiners have reported erroneously in 6.5% of their comparisons.⁵⁴ In *Justice K.S. Puttaswamy v. Union of India*, the Apex Court observed that biometrics technology cannot guarantee 100% accuracy and it is merely 99.76% accurate.⁵⁵ The Court further held that though the percentage of error is quite less but when such a failure rate is scrutinized from the viewpoint of the total number of huge populations, such failure rate itself would be a phenomenal figure.⁵⁶ Moreover, the Court has taken notice of the changing nature of biological patterns like failing of iris test due to blindness of person or changing of formation of fingerprints due to any permanent injury or age factors.⁵⁷ The UIDAI has submitted the information to the Supreme Court in *Justice Puttaswamy* case according to which, the authentication failure rates for iris scans at the national level was 8.54%.⁵⁸

⁵¹ *Ishwari Prasad v. Md. Isa* AIR 1963 SC 1728 (India).

⁵² Nitin Kaushal and Purnima Kaushal, *Human Identification and Fingerprints: A Review*, II JBB 3 (2011) available at: https://www.researchgate.net/publication/273384165_Human_Identification_and_Fingerprints_A_Review/link/5ae0146d0f7e9b285945eb8f/download (last visited 8 April, 2023).

⁵³ Samik Mukherjee & Satyanand Dey, *The Criminal Procedure (Identification) Act 2022- What, Why & Issues?* II IJALR (2022), available at: <https://www.ijalr.in/> © 2022 International Journal of Advanced Legal Research ISSN: 2582-7340 (last visited 2 May, 2023).

⁵⁴ Moshe Kam, 'Writer Identification by Professional Document Examiners' 42(5) JFS780(1997)

⁵⁵ *Justice K.S. Puttaswamy v. Union of India*, ((2017) 10 SCC 1) (India)

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

In the context of the Indian population this would mean the authentication failure of over 9 lakh unique IDs. However, when these measurements, including biological samples, are kept after analysis for such a long time, there is a probability that the measurements might change in some cases causing unnecessary victimisation of an innocent person. Therefore, the manner of collection of these measurements may lead to a disadvantage for criminal investigation or a question being raised on accuracy may create doubt in the mind of the court.

Concerns Related to Coherence of the Criminal Procedure (Identification) Act with the Existing Legislations

The legislative intent behind the enactment of this Act was to authorise the investigating authorities for taking measurements of accused, undertrial prisoners as well as convicts for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected therewith.⁵⁹ Before the enactment of this Act, the other enactments like Identification of Prisoners Act, 1920⁶⁰ and Code of Criminal Procedure, 1973⁶¹ provided several provisions for the collection of various types of biological and physical samples.

Biological, forensic, and scientific evidence plays a significant role in criminal investigations in cases where there is no direct evidence. It is often crucial in identifying suspects, establishing the facts of a case, and linking suspects to the crime scene. Forensic evidence can also be used to support or refute witness testimony and to establish the cause of death in medico legal cases. Being scientific in nature, the evidence derived through the analysis of biological and physical samples like DNA, fingerprints, hair samples is objective, unbiased, and based on scientific principles. It provides a high level of certainty, scientific irrefutability, and accuracy that other types of evidence cannot match.⁶² The use of scientific and biological evidence in criminal trials has been crucial in ensuring that the guilty are convicted and the innocent are acquitted. The enactment of legislation promoting the collection, analysis, and preservation of records of biological, physical, and psychological samples not only ensures transparency and accountability in the investigation process but also promotes the availability of crucial evidence during trial.

Prior to the enactment of Criminal Procedure (Identification) Act, 2022, the existing legislations have balanced two considerations while permitting coercive measures to collect non-communicative evidence, namely, the protection of individual's right to privacy and the need for obtaining necessary evidence for the investigation. The

⁵⁹ The Criminal Procedure (Identification) Act, 2022.

⁶⁰ The Identification of Prisoners Act, 1920, S. 3, S. 4, S. 5.

⁶¹ The Criminal Procedure Code, 1973, S. 53, S. 53-A, S. 54, S. 54A.

⁶² S. Panneerchelvam and M. N. Norazmi, *Forensic DNA Profiling and Data Base*, 10 MJMS 20(2003).

Prisoner's Act authorised the taking of "measurements" of accused, undertrial prisoners as well as convicts but had a narrower scope than the present Act.⁶³ It was restricted to taking such materials for the purpose of investigation under the Code of Criminal Procedure and provided certain procedural safeguards to protect against abuse of process.

The DNA Technology (Use and Application) Regulation Bill, 2019 was presented before the Lok Sabha in February 2019 and was referred to the Parliamentary Standing Committee on Science and Technology by the Rajya Sabha in October 2019.⁶⁴ Pursuant to this, the report of the Parliamentary Standing Committee was introduced in the Parliament in February 2021.⁶⁵ This Bill has raised several constitutional and procedural issues and several concerns were addressed through certain recommendations given by the Standing Committee.⁶⁶ The DNA Technology (Use and Application) Regulation Bill, 2019 is yet to be enacted, but since it also operates in a similar sphere, it is significant to assess the constitutionality and feasibility of the provisions of the Criminal Procedure (Identification) Act through the DNA Technology Bill

Sections 53, 53A, and 54 of Criminal Procedure Code prescribe the procedure for the collection and analysis of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and fingernail clippings, by using modern and scientific techniques, including DNA profiling, and other tests that the registered medical practitioner things are necessary in a particular case.⁶⁷ In terms of consent of accused for allowing taking of such samples, the courts have interpreted these provisions broadly in favour of investigating agencies.⁶⁸ Section 311 A of the code further permits the collection of specimen signatures and handwriting samples.⁶⁹

In the landmark case of *M. P. Sharma v. Satish Chandra*, the Supreme Court said that 'to be a witness' in the context of the right against self-incrimination of the Indian Constitution was similar to the phrase 'furnishing evidence' and therefore forcefully asking for fingerprints and handwriting samples without the consent of accused

⁶³ The Identification of Prisoners Act, 1920, S. 3.

⁶⁴ Vrinda Bhandari, *If Passed in Monsoon Session, DNA Bill will Give Unchecked Powers to Modi Govt*, THE QUINT (Aug. 04, 2021) available at: <https://www.thequint.com/opinion/dna-technology-bill-state-overreach-and-an-assault-on-privacy> (last visited 22 April. 2023).

⁶⁵ *DNA Technology Bill Is Under Consideration, Data Banks to Be Set Up: Centre*, THE WIRE (Apr. 08, 2022) available at: <https://thewire.in/government/dna-technology-bill-is-under-consideration-data-banks-to-be-set-up-centre> (last visited 22 April. 2023).

⁶⁶ *Id.*

⁶⁷ S.C. Sarkar, COMMENTARY ON THE CODE OF CRIMINAL PROCEDURE, 1973 514 (2016)

⁶⁸ *Id.*

⁶⁹ The Criminal Procedure Code, 1973, S. 311A.

shall come within the purview of that.⁷⁰ However 'to be a witness' did not entail summoning a person accused of an offence to produce his thumb impressions, finger impressions, handwriting samples or signature specimens, even though all these falls within the scope of furnishing evidence.

Unlike M.P. Sharma judgment, the Apex Court in *State of Bombay v. Kathi Kalu Oghad*⁷¹ has restrained the meaning of the phrase 'to be a witness' only to the extent of a testimonial statement either in the form of written or oral statements. The apex court has further stated that the testimonial statements do not widely encompass thumb impressions, signatures, handwriting samples etc. Although it is significantly vital to protect the rights of the accused, yet at the same time, it is also crucial to provide investigative agencies and courts the measures to extract sufficient evidence that may assist them in apprehending the culprits. Overall, it was determined that evidence that was significant and delivered in personal capacity while employing the accused's mental faculties might be included within the scope of the protection provided by Article 20 (3).⁷²

The Identification of Prisoners Act, 1920 has taken a narrower interpretation of the term 'measurements' understanding it to include finger impressions and foot-print impressions. The legislation has also allowed the taking of photographs of the person of individuals under the categories of arrested persons/prisoners covered under the ambit of Act.

The DNA Technology (Use and Application) Regulation Bill, 2019 has specified the source, means and manner of collection of body samples for DNA testing. The source for the samples includes bodily substances, trace evidence at the scene of crime, clothes, or other objects⁷³. 'Intimate bodily substance' shall include blood, semen, tissue, fluid, urine or pubic hair or swab from a person's orifice or skin or tissue and may be collected from a person, living or dead.⁷⁴ Another category of evidence includes the 'non-intimate bodily substances' which shall consist of palmprints, finger impressions, footprints, hair samples excluding pubic hair, sample of nail or under a nail, swab from a person's mouth, saliva or skin impression.⁷⁵

⁷⁰ *M. P. Sharma v. Satish Chandra*, 1954 AIR 300 (India)

⁷¹ *State of Bombay v. Kathi Kalu Oghad*, 1961 AIR 1808 (India)

⁷² The Constitution of India, Art. 20(3).

⁷³ The DNA Technology (Use and Application) Regulation Bill, 2019

⁷⁴ The DNA Technology (Use and Application) Regulation Bill, 2019, PRESS INFORMATION BUREAU Government of India Ministry of Science & Technology (08 Jul., 2019) available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577738> (last visited don 13 May, 2023)

⁷⁵ *Id.*

Evidentiary Value and Admissibility Prospects of Measurements and their Analysis

Another significant question arises regarding the admissibility and evidentiary value of the samples and measurements collected under the purview of The Criminal Procedure (Identification) Act, 2020. All these fingerprints, biological samples, footprints, behavioural attributes, handwriting, thumb impression are circumstantial evidences and their analysis are produced in the court of law under Section 45 of Indian Evidence Act as expert opinion⁷⁶.

The scope of judicial scrutiny of forensic evidence through the science underlying this analysis is missing in Indian jurisprudence unlike other jurisdictions. There are no set standards to scrutinise the forensic evidence scientifically to determine its reliability in law. Indian Evidence law lacks a clear separation between admissibility and reliability of forensic evidence and the courts rarely take into consideration any other rebuttable ground to forensic evidence beyond the desultory argument of broken chain of custody.⁷⁷ The courts in India are unfortunately seen to be disinterested to examine the scientific authenticity and accuracy of forensic evidence and rarely question the competence of an expert witness. Courts consider and admit forensic evidence focused primarily on chain of custody concerns and the arguments presented by the prosecution. Therefore, the limitations on the scrutinization and review of expert opinion under Section 45 of the Indian Evidence Act, 1872 precludes a fair assessment of the admissibility and probative value of the evidence collected under the Act, which thereby defeats the legislative intent behind the enactment of this Act with an aim to provide ample scientific evidence for administration of justice.⁷⁸

IV

The Advent of Law is Putting the Individual's Fundamental Rights in Jeopardy: Constitutional analysis

The Criminal Procedure (Identification) Act, 2022, aims to ensure the unique identification of those involved with crime and to help investigating agencies solve cases expeditiously by giving the authorities the legal authorization to collect bodily and DNA samples from suspects and criminal defendants alike.

⁷⁶ M. C. Sarkar & S. C. Sarkar, *SARKAR'S THE INDIAN EVIDENCE ACT, 1975* (2007)

⁷⁷ B. M. Prasad & Manish Mohan, *SIR JOHN WOODROFFE SYED AMIR ALI LAW OF EVIDENCE* 2198 (2013).

⁷⁸ Ram Jethmalani & D.S. Chopra, *JETHMALANI AND CHOPRA'S THE LAW OF EVIDENCE-COMMENTARY ON EVIDENCE ACT, 1872* 671 (2016).

Magistrates have the power to direct the police to ask both guilty and non-convicted people for this information.⁷⁹ A police officer or a jail official will request "measurements" from anyone who has been found guilty, arrested, or imprisoned in accordance with preventive detention legislation. Resistance or reluctance to provide data will be regarded as obstructing a public worker from performing his job under both the 1920 Act and the new Act 2022.⁸⁰ National Crime Records Bureau is the most important agency not only to preserve and share the records with law enforcement agencies but also accountable to destroy the record of measurements at national level. This data can be preserved in digital or electronic form for up to a period of 75 years.⁸¹

It now allows for the gathering, storing, and analysis of biological and physical samples from convicts and individuals detained by the police and jail officials on a variety of offenses, including eye and iris images. Many things come under personal information like finger impressions, palm-print impressions, foot-print impressions, iris and retina scans, physical and biological samples, and many other things are protected under the Right to Privacy but all these are included under the definition of "measurements" in this particular Act which needs to be collected from any person whether accused or related to the crime, on the discretion of the magistrate. The types of individuals whose data can be collected have undoubtedly expanded since the legislation now applies to anyone who has been found guilty of or detained for any crime. The law aims to widen its demographic so it can include in its ambit more people whose measurements can be logged in order to aid judicial authorities in collecting sufficient legally admissible proof and proving the accused person's crime well in time. The legislation will reduce the threat posed by organized criminality, fraudsters, and terrorists skilled in phishing scams and will speed up the probe of crimes through identification.

The gathering of such information, as required under the Act, poses multifarious questions that seek justification. It has been highlighted that there is nothing in the Act talking about the deletion of the collected data after 75 years, but it only says to retain the data digitally for 75 years, which means it gives 75 years of a full opportunity to anyone to use that data maliciously. It is important that stringent provisions must be put in place for such misuse and abuse. The legislative intent behind the enactment of this Act is primarily the identification of Criminals and Investigation in criminal matters. The preservation of the records for such a long duration has no reasonable nexus with the objective of identification and investigation in criminal matters rather there is a probability of malicious use of digital data. Therefore the legislature has failed to balance the purported benefits of the storage of personal data of accused, undertrial prisoners and convicts and the

⁷⁹ The Criminal Procedure (Identification) Act, 2022, S. 5.

⁸⁰ The Criminal Procedure (Identification) Act, 2022, S. 6.

⁸¹ The Criminal Procedure (Identification) Act, 2022, S. 4(2).

potential threat it carries regarding their right to privacy as well as misuse of data. Therefore, gathering and storage of highly confidential data for the objective of identification, such as physiological and genetic samples, does not meet the principle of proportionality. In the absence of a stringent Data Protection framework, there is still a high risk of data abuse and leaking. The legislation must strike a balance between the preservation of basic rights and privacy issues.

It is understood that the said information must be gathered without infringing on people's fundamental human rights. The 'right to privacy' has been argued before India's higher courts by being bundled in with two other basic rights: the right to freedom of speech and expression under Article 19(1)(a) and the right to life and personal liberty under Article 21.⁸² The freedom of speech and expression also includes the freedom to remain silent whereas Section 4(1)(b) of the Act includes behavioural attributes which implies that the psychological tests like polygraph, brain-mapping and Narco analysis can also be conducted on the subjects.⁸³ Moreover, Section 3 also enables the concerned officer to take such measurements without the consent of the person in certain offences.⁸⁴ The forceful compulsion to speak under the controlled laboratory conditions in these tests is a violation of Freedom to remain silent in the context of giving any self-incriminating statement. The Supreme Court has held in a celebrated case *Maneka Gandhi vs. Union of India*⁸⁵ that any procedure "which deals with the modalities of regulating, restricting or even rejection of a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus, understood, "procedure" must rule out anything arbitrary, freakish or bizarre."p636

In a minority judgment in *Kharak Singh V. The State of U.P*⁸⁶, Justice Subba Rao observed that a person's right to personal liberty includes both the freedom from limits put on his travels and the freedom from intrusions into his private life, although the right to privacy is not explicitly enumerated as a basic right in our Constitution, it is nonetheless a necessary component of human liberty. These opinions undoubtedly assisted in preparing avenues for further discussions about the right to privacy utilising the provisions of Article 21.

Therefore, an individual's right to make an informed decision about their own body and health would be violated if they were forced to furnish a biological sample without their informed consent. The Indian Constitution's Article 21 would be violated by such behavior, and legal action may be taken as a result. It is crucial to

⁸² Articles 19 & 21, Constitution of India, 1950.

⁸³ The Criminal Procedure (Identification) Act, 2022, S.4.

⁸⁴ The Criminal Procedure (Identification) Act, 2022, S.3.

⁸⁵ *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621 (India).

⁸⁶ *Kharak Singh v. The State of U.P.*, (1964) 1 SCR 332 (India).

make sure that all medical procedures, including the gathering of biological samples, are carried out in a way that upholds the principles of medical ethics and respects the rights and dignity of individuals.

In *R. M. Malkani v. State of Maharashtra*⁸⁷, in 1972, the Supreme Court held that “The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed’ interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants.”

However, in *Sharda v. Dharmpal*⁸⁸, decided in 2003, the Supreme Court held that courts can compel persons to undergo medical examinations against their will and observed that if the responder refuses to undergo such medical testing on the grounds that doing so would violate his or her right to privacy or, more specifically, their right to personal liberty as guaranteed by Article 21 of the Indian Constitution, it may become impossible to draw a decision in the majority of these situations. So, in many cases like *Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Anr*⁸⁹ and *Shri Rohit Shekhar vs Shri Narayan Dutt Tiwari*⁹⁰ the concept of non-absoluteness of right to privacy has been echoed where Hon’ble Supreme court suggested that privacy rights of individuals were subject to various checks and balances. It is also suggested that technological advances must be construed harmoniously and there must be reasonable use of force if the circumstances demand.

This certainly means that the privacy of individuals must be protected, and any personal information if need be collected must only be used for legitimate reasons. Owing to such judgments, the Indian government has recognised the value of private rights and acted to protect them. The right to privacy was deemed a basic right under the Indian Constitution by the Supreme Court of India in 2017 where the bench ruled that maintaining one’s privacy is essential to the freedoms afforded by other fundamental rights and is also a vital component of one’s sense of worth, autonomy, and liberty.⁹¹ The Supreme Court held that ‘the right to privacy is inextricably bound up with all exercises of human liberty – both as it is specifically enumerated across Part III, and as it is guaranteed in the residue under Article 21. It is distributed across the various Articles in Part III and, mutatis mutandis, takes the form of whichever of their enjoyment its violation curtails.’⁹²

⁸⁷ *R. M. Malkani v. State of Maharashtra*, 1973 AIR 157 (India).

⁸⁸ *Sharda v. Dharmpal*, (2003) 4 SCC 493 (India).

⁸⁹ *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women* (2010) 8 SCC 633 (India).

⁹⁰ *Shri Rohit Shekhar v. Shri Narayan Dutt Tiwari*, (2012) 12 SCC 554 (India).

⁹¹ *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India*, (2017) 10 SCC 1 (India).

⁹² *Id.*

Therefore, all actions under the Criminal Procedure Identification Act, 2022 must adhere to the constitutional concepts of individual rights and privacy. Section 3 of the Criminal Procedure Identification Act, 2022⁹³ violates the fundamental right against self-incrimination in India which is protected under Article 20(3) of the Indian Constitution.⁹⁴ Due to the non-existence of testimonial evidence, taking measurements generally is not regarded as a violation of an individual's right against self-incrimination when law enforcement agencies gather fingerprints and other identifying information from the same. The gathering of such material, however, may be regarded as a violation of this right in some situations, like forcefully retrieving such data for behavioural attributes, which comes in the backdrop of *Selvi vs. State of Karnataka*⁹⁵ where, according to the court, it would be unethical to use medications to accumulate data and to monitor physiological reactions. It was said that it is against the law and not a legitimate duty of law enforcement to force someone to give testimony. As a result, the court mandated that these tests need the accused person's legitimate permission in order to be performed and individuals cannot be forced to testify or submit evidence that might implicate them in a crime because of this right against self-incrimination. The idea of immunity from self-incrimination is regarded as a fundamental right by the majority of court systems across the world.⁹⁶ It tries to protect the presumption of innocence until proven guilty and prevents people from being forced to provide damaging evidence.

Another matter that is a source of trepidation is whether Section 4(3) of Criminal Procedure Identification Act, 2022 suffers from excessive delegation or not. According to the Rules⁹⁷ measurements may also be taken by anybody qualified to do so; such as, a licensed medical professional, or another person with this authority. The Rules may be going outside the bounds of the Act by including these additional groups of people that are not mentioned in the Act. It is also a matter of concern that neither the Criminal Procedure Identification Act, 2022 nor Criminal Procedure Identification Rules, 2022 talk about the attributes and requirements of a skilled person. The transfer of legislative power to judiciary is problematic and has fuelled the growth of the parallel legislature. The delegation of legislative power in such cases, however, might exacerbate this issue by limiting political accountability and

⁹³ Criminal Procedure Identification Act, 2022, S. 3.

⁹⁴ The Constitution of India, Art. 20(3); *No person accused of any offence shall be compelled to be a witness against himself.*

⁹⁵ *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).

⁹⁶ Mike Redmayne, *Rethinking the Privilege Against Self-Incrimination*, 27 OJLS 211, 209-232 (2007) available at: <https://www.jstor.org/stable/4494582> (last visited on 21st Apr, 2023).

⁹⁷ Ministry of Home Affairs, Criminal Procedure (Identification) Rules, 2022 available at: <https://prsindia.org/billtrack/criminal-procedure-identificationrules2022#:~:text=Excessive%20delegation,may%20be%20prescribed%20by%20rules> (last visited on 05 Apr, 2023).

participation in the drafting of regulations. Judges, police officers, and jail guards are given an excessive degree of discretionary authority, which unavoidably has a tendency to cross the lines that have previously been approved in the case of assigned authorities.

The 2022 Rules may further transfer the government's ability to make rules to the NCRB by allowing it to establish these rules. The Supreme Court in *Siddharth Sarawagi vs Board of Trustees for the Port of Kolkata and others*⁹⁸, (2014) remarked that the Legislature has decided that it is appropriate to delegate the aforementioned responsibility to an agency since it does not need to spend its time thinking out the specifics of how the legislation will be implemented. In this scenario, such a responsibility cannot be delegated by that agency to its staff members since doing so would be a betrayal of the trust placed in the delegate.

V

Conclusion and Suggestions

The employment of modern technology in criminal cases has drastically changed how law enforcement agencies obtain and examine evidence. These tools, which include DNA analysis and digital forensics, have assisted investigating agencies in solving complex cases and catching perpetrators. However, if modern techniques are not used in criminal investigations, justice may be denied. Without access to these cutting-edge techniques, investigators would not be able to collect and examine evidence effectively, which might result in unsolved cases or, worse still, the false conviction of innocent individuals.⁹⁹

In situations when DNA proof is crucial, a lack of adequate DNA analysis techniques might lead to the incorrect conviction of someone who is innocent or the inability to discover the genuine criminal. In absence of digital forensics technologies, police could struggle to track down cybercriminals or recover critical evidence from electronic devices.¹⁰⁰In the end, refusing to employ modern technologies in criminal investigations might have major consequences and result in a denial of justice. Access to the most recent technology is essential for law enforcement bodies to be able to carry out their duties successfully and efficiently.

⁹⁸ *Siddharth Sarawagi v. Board of Trustees for the Port of Kolkata*, (2014)16 SCC 248 (India).

⁹⁹ J. Morgan, *Wrongful convictions and claims of false or misleading forensic evidence*, 68 JFS 961 available at: <https://doi.org/10.1111/1556-4029.15233> (last visited on 01 May, 2023).

¹⁰⁰ Christa M. Miller, *A survey of prosecutors and investigators using digital evidence: A starting point*, 6 FSIS 2023, available at: <https://doi.org/10.1016/j.fsisyn.2022.100296> (last visited on 01 Apr, 2023)

Examining certain probable outcomes that would probably have a big influence on the capabilities of the investigating authorities to look into and prevent crimes is notable. Modern tools like facial recognition software, biometric identification, and DNA analysis have revolutionised law enforcement investigations.¹⁰¹ Without these tools for detection, law enforcement would be forced to rely on less sophisticated methods for identifying suspects, such as witness statements and physical evidence. This could make it harder to track down and stop offenders. Investigations could take longer to complete and might result in fewer cases being resolved without the most recent tools. For instance, DNA analysis has been crucial in concluding closed cases, but these cases would not have been concluded in the absence of this technology.

In certain cases, deploying state-of-the-art technology has helped law enforcement stop crimes before they start. To help identify potential dangers before they materialise, predictive analytics and social media surveillance has come to rescue some fallen situations.¹⁰² Without these instruments, law enforcement agencies would not be able to prevent some offences from occurring and putting everyone's safety in peril. Furthermore, the use of contemporary scientific techniques can improve the efficiency and effectiveness of law enforcement activities, thus saving both money and time. Investigations may need more time and resources if these tools were not available, raising the cost for law enforcement groups and eventually the exchequer.

The lack of access to the latest technologies could hinder law enforcement agencies' ability to investigate and prevent crimes, potentially leading to increased risks to public safety, reduced efficiency, and fewer cases solved. But a balance must be created between the admissibility of technological advancements in taking, analyzing as well as preserving scientific evidence and the protection of right against self-incrimination, equality and privacy of the accused and prisoners. The legislature shall incorporate certain elaborations and explanations in the legislation for the effective and legitimate implementation of the Act and address several issues for the practical incorporation of the statute.

- The phrase 'behavioural attributes' must be explained in a more precise manner by inserting an explanation or proviso to Section 2 (b) of the Act. It shall not be subject to judicial interpretation otherwise it will lack procedural uniformity in different jurisdictions.
- The inclusions and exclusions of biological samples must be expressed within the Act in such a way that there must not be any ambiguity related to the compulsory collection of blood, semen, saliva or any other bodily

¹⁰¹ *Id.*

¹⁰² Slobogin and Christopher, *Predictive Policing in the United States*, 23 VLR 1, available at: SSRN: <https://ssrn.com/abstract=4321021> (last visited 06 Apr, 2023).

fluids or samples for DNA examination and their must not arise a conflicting disparity between right to privacy, right against self-incrimination of the subjects and authority of investigating agencies to take measurements.

- Enactment and enforcement of a legislation loses the efficacy until and unless the major impediments in its practical implementation are removed. The Forensic laboratories and scientific infrastructure need to be thoroughly enhanced and improved for achieving the fruitful outcomes of scientifically advanced scientific techniques for analyzing these samples.
- The principles related to admissibility, evidentiary value as well as authority of conducting the Polygraph tests, Narco-analysis Test and Brain Mapping Tests without consent must be reinstated thoroughly, precisely and in parity with the protection of right against self-incrimination.
- The National Crime Records Bureau has been empowered to collect, analyse, preserve, store, and disseminate the information regarding the analysis of the samples collected and destroy the stored information after a prescribed time period. To perform these functions, NCRB must outsource the services of other scientific agencies, forensic laboratories, and skilled investigators. It is nowhere mentioned whether these agencies can be private or only governmental. These agencies must be expressly defined and their functions, powers, and accountability must be predetermined in the rules of the Act.
- The measurements taken under the Act are exclusively personal in nature and must be kept and stored without any apprehension of breach of privacy of the concerned individual. Since the analysis of such samples is in the form of digital data, there must be a stringent and effective statutory framework for data protection and there is a need to enact and implement the concerned provision of Digital Personal Data Protection Bill, 2022.
- There is an emerging need for training and qualification among investigating and police officials for collecting a wide range of measurements. Their scientific and forensic skills must be enhanced through adequate and frequent training programs and skill development sessions for the effective implementation of this Act.
- The only provision dealing with the admissibility and evidentiary value of the evidence drawn through the analysis of these measurements is of 'expert opinion' under Section 45 of Indian Evidence Act. This age-old provision is not sufficient to cater the emerging issues of admissibility of advanced scientific techniques like DNA fingerprinting and forensic psychology tests. Therefore, some new and specific provisions must be added to fulfil the legislative intent of the Act to provide some crucial scientific evidence.

- A regulatory framework must be created in order to obtain, store and analysis of DNA samples for the purposes of criminal investigations, to keep a check on the misuse of DNA technology.

The Criminal Procedure Identification Act, 2022 was enacted in order to broaden the spectrum of people whose physical, biological, and psychological measurements can be taken, analysed and kept in record. This will not only provide an effective assistance to the investigative authorities in gathering adequate scientific as well as legally acceptable evidence but also facilitate in ascertaining and establishing culpability of offenders in a concrete manner. Moreover, it will also boost prosecution and assist the judiciary in drawing reliable inferences. Undoubtedly the Act has a potential to increase the number of convictions in the courts and overcome the irony related to numerous acquittals due to insufficient evidence.