

Identification record: Protecting the rights of those under investigation

As a new Act gives the state more power to collect identity measurements, including biological samples, during a criminal investigation, experts call for safeguards against its potential abuse

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With the advent of the digital age and internet, crimes in India have become increasingly complex, leading to calls for overhauling the criminal investigation system. The first step would be to modernise the identification process used by the police and prison officials for persons accused or arrested for penal offences. The Criminal Procedure (Identification) Act, 2022, came into force on April 18, 2022.

Among other things, it seeks to authorise and regulate the collection, preservation, dissemination, analysis and storage of biometric and other identity-related measurements to aid in the investigation of criminal matters. The term “measurements” under the Act includes fingerprints, footprints, photographs, iris and retina scan, biological samples and their analysis, and behavioural attributes including signatures, handwriting and other forms of examination recognised by the Code of Criminal Procedure, 1973.

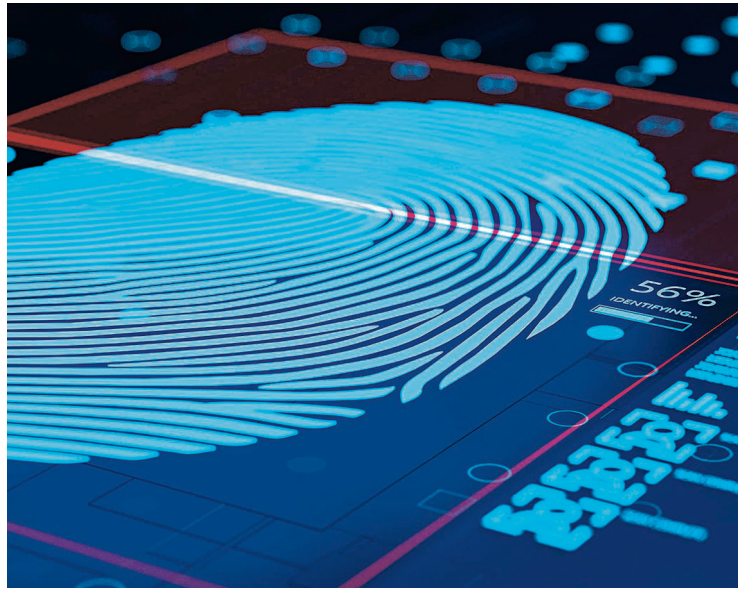
In essence, the Act has widened the powers of the State to collect measurements of certain classes of people during a criminal investigation and, in the process, repealed the erstwhile law — namely, the Identification of Prisoners Act, 1920, which was deemed outdated.

The Act covers the collection of measurements not only from convicted individuals but also persons under preventive detention or arrested for any punishable offence. Refusal to cooperate is classified an offence under Section 186 of the Indian Penal Code, 1860. Further, the Act authorises the police or prison officials to compel a person to give measurements.

The National Crime Records Bureau (NCRB) is the nodal body that shall collect, store, preserve and destroy the records of measurements at a national level. The NCRB is also authorised to share such records with any law enforcement agency.

Challenges

While the Act aims to adopt global



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best practices and criminal investigation techniques to allow the state machinery to efficiently identify accused and convicted persons, experts have pointed out that some aspects of the Act remain open to interpretation and potential abuse. Under “measurements”, terms such as “analysis”, “biological samples” and “behavioural attributes” do not have a set threshold, leaving them open to wide interpretation. Similarly, the Act envisages record-keeping by the NCRB but does not specify how they would be created and managed.

The Act has delegated to the executive the rule-making powers on certain important functions. Every parent law typically has broad guidelines for its enforcement. The Act lacks such guidance in places. For instance, the rule-making power covering the manner of collection of measurements and its storage, sharing and processing is delegated to the government concerned. The Act does not lay down any procedural safeguards for the collection, storage, processing, sharing and destruction of measurements. In many landmark judgements, such as the Delhi Laws Act case, it was held that the legislature should be mindful that,

when delegating its powers to the executive, the essential legislative functions are not delegated. This is in line with the principle of separation of powers, where the legislature, executive and judiciary are deemed to have distinct and independent functions and powers.

Under the Code of Criminal Procedure, 1973, a police officer seeking medical examination of an accused is required to be satisfied that there are “reasonable grounds” to believe the examination will afford evidence of commission of offence. However, under the Act, there is no such prerequisite or standard to be met when taking the measurements of persons covered under Section 3. The Act provides discretionary powers to the police or prison officials to take measurements “if so required”. Experts have opined that this may leave the door open for abuse of powers and harassment of individuals, more specifically in white-collar crimes.

The measurements envisaged under the Act encompass what are termed “behavioural attributes”, which are not defined. However, going by the dictionary meaning, if measuring behavioural attributes was to include some kind of neuro-

scientific investigation, then the Act may be blurring the lines of self-incrimination. In *Selvi vs State of Karnataka*, the Apex Court had opined that medical tests such as brain mapping, narco-analysis and polygraph are prohibited by law. The Supreme Court held that such investigative techniques violate an accused person’s right against self-incrimination under Article 20(3) of the Constitution. Thus, the decision in *Selvi vs State of Karnataka* recognises what may be called mental privacy and the freedom or autonomy of a person to stay silent.

Efficient investigation

The most important aspect to be determined is whether the Act achieves the objective of prevention of crimes, and increasing the efficiency of criminal investigations. It is a well-recognised fact that many undertrial prisoners languish in prison on account of a protracted trial and lack of efficient evidence-taking methods. A new law that incorporates modern scientific techniques to identify persons was certainly the need of the hour.

However, the implementation of a completely new regime of taking measurements would require adequately trained personnel. It would be a herculean task, especially since many prisons in India lack basic infrastructure and are overcrowded.

The state and central governments must work in tandem to devise a scalable, efficient and uniform protocol for taking measurements. The Act is likely to impact not only fresh investigations but also ongoing ones for various penal offences and white-collar crimes. Thus, there must be a fine balance between the fundamental rights of those being investigated and the objective of the state to conduct criminal investigations efficiently. All efforts must be made to ensure that the implementation of the Act does not traverse the blurred lines of self-incrimination, which would be against the very bedrock of free and fair trials.

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