

Rules and Regulations Review

Criminal Procedure (Identification) Rules, 2022

Key Features of the Rules

- ◆ The Criminal Procedure (Identification) Act, 2022, allows police officers or prison officers to collect certain identifiable information (such as fingerprints, biological samples) from convicts or those who have been arrested for an offence. The Rules empower the NCRB to specify guidelines for taking measurements, and handling, storage, processing, matching, destruction and disposal of these records.
- ◆ The Rules provide that an authorised police officer or prison officer, a registered medical practitioner, or any person skilled in taking the measurements may take such measurements under the Act.

Key Issues and Analysis

- ◆ The Act specifies the grounds under which measurements may be collected and who can collect such measurements. The Rules change the scope of the Act by altering the grounds under which measurements may be collected, and the list of persons who may take measurements.
- ◆ The Act delegates certain powers to the government. The Rules further delegate these to the NCRB. The Supreme Court has held that tasks entrusted to an entity in subordinate legislation may not be further delegated to another entity. These delegated powers include guidelines to NCRB on maintaining records. NCRB issuing guidelines for itself also violates the principle of separation of powers between an entity that issues the guidelines and one that has to follow these guidelines.
- ◆ The Act provides for destruction of measurement records if a person is acquitted. The Rules put the onus on the person to request for the destruction of such records.

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The Criminal
Procedure
Identification
Rules, 2022
dated
September 19,
2022

The Criminal Procedure (Identification) Act, 2022 allows collection of identifiable information from individuals for investigation of crime.¹ It replaced the Identification of Prisoners Act, 1920, and expanded the ambit of people from whom information can be collected, and the categories of information that will be collected. Petitions challenging the Act are currently pending in the Delhi and Madras High Courts.

In September 2022, the Criminal Procedure (Identification) Rules, 2022 were notified under the Act to specify the manner of taking certain information from individuals, the manner of collecting, storing, sharing such records, and the disposal of such records.²

KEY FEATURES

The Criminal Procedure (Identification) Act, 2022, empowers police officers or prison officers to collect certain identifiable information from convicts or those who have been arrested for an offence. This information could include finger-prints, photographs, iris and retina scan, biological samples and their analysis, and behavioural attributes. The Act empowers the National Crime Records Bureau (NCRB) to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate and destroy records of measurements, as may be prescribed by rules. The Criminal Procedure (Identification) Rules, 2022 specify these details. These Rules were notified by the Ministry of Home Affairs on September 19, 2022.

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Key features of the 2022 Rules include:

- **Taking measurements:** Under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. The Rules specify that for certain persons measurements will not be taken unless they have been charged or arrested in connection with any other offence. These persons include those violating prohibitory orders under Sections 144 or 145 of the Code of Criminal Procedure, 1973 (CrPC), or arrested under preventive detention under Section 151 of CrPC.
- **Persons authorised to take measurements:** The Act provides that measurements will be taken by a police officer or prison officer. The Rules specify that an authorised user, or any person skilled in taking the measurements, or a registered medical practitioner, or any person authorised in this behalf may take such measurements. An authorised user has been defined as a police officer or a prison officer, who has been authorised by the NCRB to access the database.
- **Storage of measurement records:** The Rules specify that the NCRB will issue the Standard Operating Procedures (SOPs) for taking measurements including: (i) specifications and the format of the measurements to be taken, (ii) specifications of the devices to be used for taking these measurements, and (iii) the method of handling and storing these measurements. The SOPs may also provide for: (i) the digital format to which each measurement should be converted before uploading on to the database, and (ii) the encryption method.
- **Sharing of records:** To match the record of measurements of a person, an authorised user will forward the request to NCRB. NCRB will match the record and provide a report to the authorised user through a secure network. The SOPs will provide the guidelines for processing and matching of the records.
- **Destruction of records:** The Act provides that the records will be destroyed in case of persons who: (i) have not been previously convicted (of an offence with imprisonment), and (ii) are released without trial, discharged, or acquitted by the court, unless directed otherwise by the Magistrate or court. The NCRB will destroy the records as prescribed. As per the Rules, the SOPs will provide the procedure for destruction and disposal of records. The state or central government or UT administration will nominate a nodal officer to whom requests for destruction of record of measurements will be made. The nodal officer will recommend the destruction of records to NCRB after verifying that such records are not linked with any other criminal cases.

KEY ISSUES AND ANALYSIS

The Act has several provisions that may violate a person's right to privacy under Article 21 of the Constitution as laid down by the Supreme Court. It may also fail the Article 14 requirement of a law to be fair and reasonable, and for equal treatment. We have discussed these issues in our note on the Criminal Procedure (Identification) Bill, 2022.³ In this note, we examine the various issues that arise from the Rules notified on September 19, 2022.

Rules going beyond the scope of the Act

The Supreme Court has held that Rules cannot alter the scope, provisions, or principles of the parent Act.^{4,5,6} There are several instances where these Rules may be altering the scope of the Act. We discuss these below.

Restricting instances where measurements may be taken

Under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. Further, the Magistrate may order collection of measurements from any person to aid investigation. The Rules specify that for certain persons measurements will not be taken unless they have been charged or arrested in connection with any other offence. These persons include those violating prohibitory orders under Sections 144 or 145 of CrPC, or arrested under preventive detention under Section 151 of CrPC. Thus, the Rules are restricting the grounds under which a person's data may be collected. In doing so, they may be altering the grounds specified in the Act, and thus going beyond the scope of the Act.

Expanding the list of persons who may take measurements

The Act provides that the measurements will be taken by a police officer or prison officer. The Rules expand this to also allow any person skilled in taking the measurements or a registered medical practitioner or any person authorised in this behalf to take such measurements. In adding these new categories of persons not specified in the Act, the Rules may be going beyond the scope of the Act. The Act or the Rules also do not define who is a person skilled in taking measurements.

Act: Sections
3, 5
Rules: Rules
2(1)(b), 3(1)

Restricting the list of persons who can take measurements

The Act permits the collection of measurements by either a prison officer (not below the rank of Head Warder), or a police officer (in charge of a police station, or at least at the rank of a Head Constable). The Rules specify that an authorised user may take measurements under the Act. As per the Rules, an authorised user has been defined as a police officer or a prison officer, who has been authorised by the NCRB to access the database. Thus, the Rules are restricting the category of officers who may take measurements and access the database. The Act does not allow the NCRB or any other entity to prescribe such restrictions. It also does not delegate the power to prescribe such restrictions to the central or state governments. Therefore, in prescribing such restrictions, the Rules may be going beyond the scope of the Act.

Excessive delegation

Act: Sections 2(d), 3, 4, 8

Rules: Rule 3(2), 5, 6

The Act empowers the NCRB to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate and destroy records of measurements as may be prescribed by rules. It delegates the power to make Rules to the central and state government. The Rules specify that NCRB, through SOPs, will specify the guidelines and procedure for: (i) taking measurements, (ii) handling and storage of these records, (iii) the processing and matching of the records, and (iv) destruction and disposal of records. This raises two questions.

Further delegation of rule-making power to NCRB

In allowing the NCRB to specify these guidelines, the Rules may be further delegating rule making powers of the government to the NCRB. The Supreme Court (2014) when examining a case on excessive delegation had noted that “Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.”⁷

This also raises a further question that whether these SOPs would be laid before Parliament or State Legislatures. The Act requires the respective governments to table the Rules in Parliament or State Assemblies. For example, the Rules that we are discussing need to be tabled. However, it is not clear whether the SOPs prescribed by the NCRB will see such scrutiny.

Conflict in NCRB prescribing own guidelines

By issuing these SOPs, the NCRB will be issuing guidelines for itself for collecting, storing and processing of measurements. This may violate the principle of separation of roles between the entity that issues guidelines and the entity that has to follow such guidelines.

Records to be destroyed on request

Act: Section 4
Rules: Rule 5(5)

Under the Act, NCRB will store, preserve and destroy the records, as prescribed. The records will be destroyed in case of persons who: (i) have not been previously convicted, and (ii) are acquitted after all appeals, or released without trial. As per the Rules, the SOPs will provide the procedure for destruction and disposal of records. To destroy any record, a request has to be made to a nodal officer (appointed by the state or central government or UT administration). The nodal officer will recommend the destruction of records to NCRB after verifying that such records are not linked with any other criminal cases. While the Act requires destruction of records in such cases, the Rules put the onus on the individual to request for such destruction.

In some other laws, the onus of destroying personal information is on the authority maintaining the information or on the courts to direct the authority to delete such information when it is no longer required. For example, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that records of a child who has been convicted and has been dealt with under the law should be destroyed (except for heinous offences).⁸ In such cases, the Juvenile Justice Board directs the police or the court and its own registry to destroy the records. The Rules under the Act also specify that such records be destroyed (after expiry of the appeal period) by the person-in-charge, Board, or the Children’s Court.⁹ The Identification of Prisoners Act, 1920 (which was repealed by the 2022 Act) provided that records of a person who has been acquitted be destroyed.¹⁰

1. [The Criminal Procedure Identification Act, 2022](#).
2. [The Criminal Procedure \(Identification\) Rules, 2022](#), Ministry of Home Affairs, September 19, 2022.
3. [Issues for Consideration: Criminal Procedure \(Identification\) Bill, 2022](#), PRS Legislative Research, April 4, 2022.
4. Agricultural Market Committee vs Shalimar Chemical Works Ltd, 1997 Supp (1) SCR 164, May 7, 1997.
5. State of Karnataka vs Ganesh Kamath, 1983 SCR (2) 665, March 31, 1983.
6. Kerala State Electricity Board vs Indian Aluminium Company, 1976 SCR (1) 552, September 1, 1975.
7. Siddharth Sarawagi vs Board of Trustees for the Port of Kolkata and others, [SPECIAL LEAVE PETITION \(CIVIL\) NO.18347/2013](#), Supreme Court of India, April 16, 2014.
8. [The Juvenile Justice \(Care and Protection of Children\) Act, 2015](#).
9. [The Juvenile Justice \(Care and Protection of Children\) Model Rules, 2016](#), Ministry of Women and Child Development, September 21, 2016.
10. [The Identification of Prisoners Act, 1920](#).

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