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THE CRIMINAL PROCEDURE (IDENTIFICATION) BILL, 2022 – AN ENCROACHMENT UPON THE RIGHT TO PRIVACY?

Introduction

On 6th April 2022 the Criminal Procedure (Identification) Bill, 2022 (herein referred to as Identification Bill, 2022) was passed in both houses of the Parliament with the motive to replace the Identification of Prisoners Act, 1920 (IP Act, 1920). Under the IP Act, 1920 the “measurements” of only finger impressions and footprint impressions are allowed but the introduction of the Identification bill, 2022 allows comprehensive biometric data and other personal data collection on arrest and detention of any person. The bill aims to broaden the ambit of the IP Act, 1920 and use advanced technologies in the investigation process. It authorizes for measurements of convicts and other persons for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto.

Salient Features of the Identification Bill, 2022 -

- The Bill authorizes to take “measurements” to tag those who have been convicted, arrested, or detained:
 - i Including impressions of fingerprints, palm prints, and footprints;
 - ii Photos;
 - iii Iris and retina scans;
 - iv Analysis of physical and biological samples; and
 - v Behavioural attributes, including signature and handwriting.
- The bill allows a police officer or a prison officer to collect the ‘measurements’ of any person convicted of an offence, ordered to give security for his good behaviour or maintaining peace, and person arrested for the offence. Though it exempts the collection of biological samples of an arrested person unless such arrested person has committed an offence against a woman or a child or any cognizable offence.
- The National Crime Record Bureau (NCRB), for the purpose of prevention, detection, investigation and

prosecution of any offence, is empowered to collect, store, preserve and destroy the records of the measurements. It can even process such records with relevant crime and criminal records and share and disseminate such records with any law enforcement agency.

- The NCRB will be the repository of these records and they can preserve it for 75 years. If in case any arrested person is released without trial or discharged or acquitted by the court, after exhausting all legal remedies, can seek the records to be completely destroyed by the NCRB. Though, the court is still empowered to deny the destruction of such records of the arrested person after providing reasoning for the same. Prosecution of any offence, is empowered to collect, store, preserve and destroy the records of the measurements. It can even process such records with relevant crime and criminal records and share and disseminate such records with any law enforcement agency.
- It empowers a Magistrate to direct any person to give measurements; a Magistrate can also direct LEAs officials to collect such data both in the case of convicted and non-convicted persons of a specified category. Those who refuse or resist giving the measurements can be charged under Section 186 of the Indian Penal Code on charges of obstructing a public servant from discharging their duty.

Point of Issue/ Discussion –

The major issue that prevails throughout the bill is the issue of privacy breach as the whole bill revolves around the collection of sensitive personal data of a person. After the judgment of K.S. Puttaswamy vs. Union of India ((2017) 10 SCC 1), the Supreme Court held that the right to privacy is a fundamental right and declared that informational privacy includes biometric data and other personal information, hence protected under Article 21 of the Indian Constitution.

The definition of measurements includes a person’s sensitive personal data as well as its analysis. The defi-



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dition is extremely vague and unclear. The Government of India has always tried to protect the sensitive personal data of any individual, may it be through the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 under the Information Technology Act, 2000, and now the Data Protection Bill, 2021. The Identification Bill, 2022 seems to be not in line with these two legislations. Where on one side these two legislations protect the privacy of the person being infringed and on the other side, the Identification Bill, 2022 encroaches upon the private information of a person.

As the bill allows the retention of ‘measurements’ of the person for 75 years which implies that once a person commits an offence or is even charged with any offence, his ‘measurements’ will be preserved by the NCRB for his remaining whole life and even after death. Supposing if a child of 8 years of age is arrested, his ‘measurements’ may be preserved lifetime and after death with the NCRB as the life expectancy in India is 69 years. The person below the age of 7 years anyways has absolute immunity from being liable for a crime as per section 82 of the Indian Penal Code. This violates the right to be forgotten enshrined under Article 21 of the Indian Constitution which is partially accepted in India. This implies that the person whose ‘measurement’ once collected can’t seek the removal of such information and in the records of the NCRB, he’ll remain a person charged with an offence.

Some other lacunas in the bill related to the ‘privacy and protection of personal data aspect’ are –that the bill seeks to collect the ‘measurements’ of not only a convicted person but also the person who is arrested or detained. Such a person may be later released clean-handed but still, he had to go through all the requirements of sharing his sensitive personal information that may affect him emotionally and psychologically. The bill lacks clarity on how the data will be protected and what measures and techniques will be taken up to preserve the data safely and safeguard it from being leaked or stolen.

Conclusion

It cannot be denied that this Bill is harmonious with the technologically driven world. The earlier act of 1920, does not provide for taking these body measurements as many of the techniques and technologies had not been developed at that point in time. But now technology is widely used to commit a crime or to escape from the crime, hence the technology should also be used to apprehend the criminal. The Bill intends to modernise and strengthen law enforcement agencies by using new technically advanced methods for collecting wholesome data of any person. This will in turn result in speedy trials, increase prosecution rate and chances of a better conviction rate. The proposed legislation claims that these biometric data collected from undertrials and convicts by “advanced countries” have helped investigations and given “credible and reliable results. It is, therefore, essential to make provisions for modern techniques to capture and record appropriate body measurements in place of existing limited measurements.