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The Criminal Procedure (Identification) Act, 2022

Why in news?

Recently, the government has introduced the Criminal Procedure (Identification) Act, 2022.

What is the Criminal Procedure (Identification) Act, 2022?

- The Act provides legal sanction to law enforcement agencies for taking measurements of convicts and other persons for the purposes of identification and investigation of criminal matters.
- It repeals the existing Identification of Prisoners Act, 1920.

To know more about the features of the Act, click [here](#)

What was the previous Identification of Prisoners Act, 1920?

- **Expansion of features-** The Bill expands
 - the type of data that may be collected
 - persons from whom such data may be collected
 - the authority that may authorise such collection
- **Evidence collection-** The Act allows police officers to collect certain identifiable information (fingerprints and footprints) of persons including convicts and arrested persons.
- **Policing-** Even though the police has powers of arrest, mere arrest does not give them the right to search a person.
- The police require legal sanction to search the person and collect evidence.
- **Data storage-**It also provides for the data to be stored in a central database.
- In case of acquittal or discharge of the person, all material must be destroyed.
- **Offence-** Under the Act, resistance or refusal to give data will be considered an offence of obstructing a public servant from doing his duty.

What was the need to replace this Act?

- There was a need to expand the scope of measurements to include “palm impressions”, “specimen of signature or writing” and “specimen of voice”.
- Allowing measurements to be taken for proceedings other than those under the Code of Criminal Procedure (CrPC) is also needed.
- In 1980, the 87th Report of the Law Commission of India undertook a review of this legislation and recommended several amendments.

- The Supreme Court had highlighted the need for amending this law in the *State of UP vs Ram Babu Misra* case.
- The Law Commission Report also noted the need for an amendment which is reflected by the numerous amendments made to the Act by several States.

What are the highlights in both the legislations?

- **Legal sanction-** Like the Identification of Prisoners Act, 1920, the new Act provides for legal sanction to law enforcement agencies for the collection of measurements.
- The purpose is to create a useable database of these measurements.
- **Database-** At the State level, each State is required to notify an appropriate agency to collect and preserve this database of measurements.
- At the national level, the National Crime Records Bureau (NCRB) is the designated agency to manage, process, share and disseminate the records collected at the State level.

What are the concerns with the present legislation?

- **Privacy-** The legislation comes in the backdrop of the right to privacy being recognised as a fundamental right.
- The Supreme Court's landmark ruling in *Puttaswamy v Union of India* made it clear that any state action infringing on the right needs to be backed by legislation.
- The inclusion of derivative data such as "analysis" and "behavioural attributes" have raised concerns that data processing may go beyond recording of core measurements.
- **Taking measurements of convicted-** The current law allows for measurements to be taken if a person has been convicted/arrested for any offence, including petty offences.
- Such discretion is likely to result in abuse of the law at lower levels and overburdening of the systems used for collection and storage of these measurements.
- **Data storage-** These records will be stored for 75 years from the time of collection.
- **Exception-** The new act allows that a person who has been arrested for an offence that is punishable by less than 7 years of imprisonment, and is not an offence against women and children, may not be obliged to allow taking of his biological samples.
- But it is limited to biological samples and is available at the discretion of the police office thus providing restricted relief.
- **Mass surveillance-** Collection can result in mass surveillance, with the database under this law being combined with other databases such as Crime and Criminal Tracking Network and Systems (CCTNS).
- **Violation of right against self-incrimination-** The present law violates the right against self-incrimination enshrined in Article 20(3) of the Constitution of India.
- However, in the *State of Bombay vs Kathi Kalu Oghad*, the Supreme Court had held that "non-communicative" evidence i.e. evidence which does not convey information within the personal knowledge of the accused cannot be understood to be leading to self-incrimination.
- **No public consultation-** It has not been submitted for public consultation or referred to parliamentary standing committees.

What is the way ahead?

- The Central government has stated that privacy and data protection related concerns will be addressed in the Rules formulated under the legislation and through model Prison Manuals that States can refer to.
- A writ petition has been filed challenging the constitutionality of the law before the Delhi High Court.
- The court has issued notice to the Central government for filing a reply.

References

1. <https://www.thehindu.com/news/national/explained-what-is-the-criminal-procedure-identification-act-2022/article65757554.ece?homepage=true>
2. <https://prsindia.org/billtrack/prs-products/issues-for-consideration-3946>



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