



Indore World Summit

Study Guide (Lok Sabha)



AGENDA

The criminal procedure (identification) bill, 2022

LETTER FROM THE EXECUTIVE BOARD

Dear Prospective Members,

On behalf of the Executive Board, we extend a warm welcome to all of you and congratulate you on being a part of Indore World Summit 2022.

The committee being simulated, unlike most other simulations you must have heard of or been a part of; focuses on political intellect and analytical application of thoughts and strategic application of thoughts in resolving impending politically sensitive bilateral issues.

Kindly note that we are not looking for existing solutions, or statements that would be a copy paste of what the kind of leader you are representing has already stated; instead, we seek an out of the box solution from you, while knowing and understanding your impending political and ideological limitations.

This Introductory guide would be as abstract as possible, and would just give you a basic perspective on what you can expect from the committee and areas within which your research should be focused at this given point of time. Given, the extremely political and volatile nature of this committee, your presence of mind and politico-analytical aptitude is something which we at the executive board would be looking to test. Kindly do not limit your research to the areas highlighted but ensure that you logically deduce and push your research to areas associated with the issues mentioned. Also, unlike most conventional/unconventional committees you have attended, this committee shall have “substantive” intervention by the Executive Board.

The objective of this background guide is to provide you with a ‘background’ of the issue at hand and therefore it might seem to some as not being comprehensive enough. If you feel that the Guide does not cover all the issues and it could have been compiled in a better way by giving more information or links or better arguments ‘for’ and ‘against’, we think that would be the appropriate time to pat our backs for we successfully managed to compile a ‘Background Guide’ and not a ‘Study Guide’ which most of the Executive Board members fail to differentiate. We feel that ‘study guides’ are detrimental to the individual growth of the delegate since they overlook a very important part of this activity, which is- Research. We are sure that this background guide will give you a perfect launching pad to start with your research.

The usage of internet in the committee is prohibited, barring the devices the Executive Board, the Secretariat and the Conference Staff are carrying.

Wishing you all good luck and hoping to see you all at this conference discussing imperative issues of national concern.

Warm Regards.....

Samman Vardhan Gautam
(Speaker)

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Following is a suggested pattern for researching (if required):

- ▶ Research on the allotted personality, understanding his/her thinking about the agenda.
- ▶ ☐ Comprehending the Party Policy of the allotted Personality. It includes understanding the ideology and principles adopted by the party on the agenda. It further includes studying past actions taken by the party on the agenda and other related issues –specifically analyzing their causes and consequences.
- ▶ ☐ Researching further upon the agenda using the footnotes and links given in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc.
- ▶ ☐ Understanding policies adopted by different political parties and major parties involved in the agenda. Including their position, ideology and adopted past actions.
- ▶ ☐ Characterizing the agenda into sub-topics and preparing speeches and statements on them. It is the same as preparing topics for the moderated caucuses and their content.
- ▶ ☐ Preparing a list of possible solutions and actions that can be adopted on the issue as per your party's policies.
- ▶ ☐ Assemble proof/evidence for any important piece of information/allegation you are going to use in committee
- ▶ ☐ Keeping your research updated using various news sources, especially news websites given in the proof/evidence section.
- ▶ ☐ Lastly, we would request all the delegates to put sincere efforts in preparation

and research for the simulation and work hard to make it a fruitful learning experience for all.

A lot of members have doubts such as what they are supposed to write or how should they structure their speech. This is completely up to the member. The maximum we can do is to tell you according to our experiences about how speeches are structured and content chosen for them accordingly. These are:

- Premise – Analysis – Example
- Problem – Solution – Benefits
- Past – Present – Future Scenario • What – So what – Now what

There can be more structures. These are some of them which the members of the Executive Board have seen.

Note: The best way to debate in any format is to clearly state your opinion and justify it with substantive rational sources

PROOF/EVIDENCE IN COMMITTEE

1. Government Reports (Each ministry publishes its own reports including External Affairs Ministry)
2. Government Websites
3. Government run News channels i.e., RSTV, LSTV, DD News
4. Standing Committee Reports/ Commission Reports
5. RTI Proofs
6. Parliamentary Standing Committee reports
7. Questions and Answers of the parliament

NOTE: Under no circumstances will sources like Wikipedia (<http://www.wikipedia.org/>), AmnestyInternational (<http://www.amnesty.org/>) or newspapers like Times of India (<http://timesofindia.indiatimes.com/>), etc. be accepted as PROOF/EVIDENCE. But they can be used for better understanding of any issue or even be brought up in debate if the information given in such sources is in line with the beliefs of the Government.

INTRODUCTION TO THE COMMITTEE

LOK SABHA

- Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage. The maximum strength of the House envisaged by the Constitution is 552, which is made up by election of upto 530 members to represent the States, upto 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the Hon'ble President, if, in her/his opinion, that community is not adequately represented in the House.
- After coming into effect of The Constitution (One Hundred and Fourth Amendment) Act, 2019, the provision of special representation of the Anglo-Indian community in the House of the People by nomination has not been extended further.
- The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.



Overview of the Bill

- The Criminal Procedure (Identification) Bill, 2022 was introduced in Lok Sabha on March 28, 2022. The Bill replaces the Identification of Prisoners Act, 1920. The Act authorises the collection of certain identifiable information about specified persons such as convicts for investigation of crime. The Bill expands the ambit of such details, and persons whose details can be taken.

It authorises the National Crime Records Bureau to collect, store, and preserve these details.

- Details about convicts and other persons: The Act permits the collection of photographs and specified details about convicts and other persons including finger impressions and footprint impressions. The Bill expands the list of details that can be collected. It will now include: (i) palm-print impressions, (ii) iris and retina scans, (iii) behavioural attributes such as signature and handwriting, and (iv) other physical and biological samples such as blood, semen, hair samples, and swabs, and their analysis.
- Persons whose details may be taken: As per the Act, the following persons may be required to give photographs and specified details: (i) persons convicted of certain offences (such as offences punishable with a minimum of one year of rigorous imprisonment), (ii) persons ordered to give security for good behaviour or maintaining peace under the Code of Criminal Procedure, 1973 (CrPC), and (iii) persons arrested in connection with an offence punishable with at least one year of rigorous imprisonment. The Bill widens the ambit of such persons to include all convicts, arrested persons, as well as persons detained under any preventive detention law. Arrested persons will not be obliged to give their biological samples unless they have committed an offence against a woman or a child, or an offence punishable with a minimum of seven years of imprisonment.



- **Retention of details:** The Bill requires the details collected to be retained in digital or electronic form for 75 years from the date of collection. The record may be destroyed in case of persons who: (i) have not been previously convicted, and (ii) are released without trial, discharged, or acquitted by the court, after exhausting all legal remedies. A Court or a Magistrate may direct the retention of details in case of such persons after recording reasons in writing.
- **Resistance to giving details:** As per the Bill, resistance or refusal to give details will be considered an offence under the Indian Penal Code, 1860. In case of such resistance or refusal, police officers or prison officers may collect details in the manner prescribed under Rules made by the state government or the central government.
- **Persons authorised to collect details:** Under the Act, details may be collected by police officers who: (i) are in charge of a police station, (ii) conduct investigation under the CrPC, or (iii) are at least at the rank of a Sub-Inspector. The Bill permits the collection of details about specified persons 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). Note that a Head Constable is generally two ranks below a Sub-Inspector.
- **Powers of Magistrate:** Under the Bill, a Magistrate may direct a person to give details for the purpose of an investigation or proceeding under the CrPC. Depending on certain factors (such as the area concerned), the Magistrate may be a Metropolitan Magistrate, a Judicial Magistrate of the first class, or an Executive Magistrate.
- **Role of the National Crime Records Bureau (NCRB):** The Bill empowers NCRB to collect the details about the persons covered under the Bill from state governments, union territory (UT) administrations, or other law enforcement agencies. Other functions of NCRB under the Bill include: (i) storing and destroying the details about specified persons at the national level, (ii) processing the details with relevant criminal records, and (iii) disseminating the details to law enforcement agencies. Further, state governments and UT administrations may notify agencies to collect, preserve and share details about specified persons in their respective jurisdictions.
- **Rule-making power extended to the central government:** The Act vested rule-making power only in the state government. The Bill extends this pow-

er to the central government as well. The central or state government may make rules on various matters, including: (i) the manner of collecting details, and (ii) the manner of collection, storage, preservation, destruction, dissemination, and disposal of details by NCRB.



Issues for Consideration

The Criminal Procedure (Identification) Bill, 2022

The Identification of Prisoners Act, 1920 allows police officers to collect certain identifiable information (fingerprints and footprints) of persons including convicts and arrested persons.^[1] Also, a Magistrate may order measurements or photographs of a person to be taken to aid the investigation of an offence. In case of acquittal or discharge of the person, all material must be destroyed.

There have been advances in technology that allow other measurements to be used for criminal investigations. The DNA Technology (Use and Application) Regulation Bill, 2019 (pending in Lok Sabha) provides a framework for using DNA technology for this purpose.^[2] In 1980, the Law Commission of India, while examining the 1920 Act, had noted the need to revise it to bring it in line with modern trends in criminal investigation.^[3] In March 2003, the Expert Committee on Reforms of the Criminal Justice System (Chair: Dr. Justice V. S. Malimath) recommended amending the 1920 Act to empower the Magistrate to authorise the collection of data such as blood samples for

DNA, hair, saliva, and semen.[\[4\]](#)

The Criminal Procedure (Identification) Bill, 2022 was introduced in Lok Sabha on March 28, 2022. The Bill seeks to replace the Identification of Prisoners Act, 1920.[\[5\]](#)

Key Features of the Bill

The Bill expands: (i) the type of data that may be collected, (ii) persons from whom such data may be collected, and (iii) the authority that may authorise such collection. It also provides for the data to be stored in a central database. Under both the 1920 Act and the 2022 Bill, resistance or refusal to give data will be considered an offence of obstructing a public servant from doing his duty. Table 1 compares provisions of the 2022 Bill with the 1920 Act.

Table 1: Comparison of key provisions of the 1920 Act and the 2022 Bill

1920 Act	Changes in the 2022 Bill
Data permitted to be collected	
<ul style="list-style-type: none"> Fingerprints, foot-print impressions, photographs 	<ul style="list-style-type: none"> Adds: (i) biological samples, and their analysis, (ii) behavioural attributes including signatures, handwriting, and (iii) examinations under sections 53 and 53A of CrPC (includes blood, semen, hair samples, and swabs, and analyses such as DNA profiling)
Persons whose data may be collected	
<ul style="list-style-type: none"> Convicted or arrested for offences punishable with rigorous imprisonment of one year or more. Persons ordered to give security for good behaviour or maintaining peace. Magistrate may order in other cases collection from any arrested person to aid criminal investigation 	<ul style="list-style-type: none"> Convicted or arrested for any offence. However, biological samples may be taken forcibly only from persons arrested for offences against a woman or a child, or if the offence carries a minimum of seven years imprisonment. Persons detained under any preventive detention law. On the order of Magistrate, from any person (not just an arrested person) to aid investigation
Persons who may require/ direct collection of data	
<ul style="list-style-type: none"> Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above 	<ul style="list-style-type: none"> Officer in charge of a police station, or of rank Head Constable or above. In addition, a Head Warder of a prison
<ul style="list-style-type: none"> Magistrate 	<ul style="list-style-type: none"> Metropolitan Magistrate or Judicial Magistrate of first class. In case of persons required to maintain good behaviour or peace, the Executive Magistrate

Note: CrPC - The Code of Criminal Procedure, 1973.

Sources: *The Identification of Prisoners Act, 1920*; *The Criminal Procedure (Identification) Bill, 2022*; *PRS*.

- The National Crime Records Bureau (NCRB) will be the central agency to maintain the records. It will share the data with law enforcement agencies. Further, states/UTs may notify agencies to collect, preserve, and share data in their respective jurisdictions.
- The data collected will be retained in digital or electronic form for 75 years. Records will be destroyed in case of persons who are acquitted after all appeals, or released without trial. However, in such cases, a Court or Magistrate may direct the retention of details after recording reasons in writing.



Issues to consider

Bill may violate the Right to Privacy as well as Equality

The Bill permits the collection of certain identifiable information about individuals for the investigation of crime. The information specified under the Bill forms part of the personal data of individuals and is thus protected under the right to privacy of individuals. The right to privacy has been recognised as a fundamental right by the Supreme Court (2017).^[6] The Court laid out principles that should govern any law that restricts this right. These include a public purpose, a rational nexus of the law with such purpose, and that this is the least intrusive way to achieve the purpose. That is, the infringement of privacy must be necessary for and proportionate to that purpose. The Bill may fail this test on several parameters. It may also fail Article 14 requirements of a law to be fair and reasonable, and for equality under the law.^[7]

The issue arises due to the fact that: (a) data can be collected not just from convicted

persons but also from persons arrested for any offence and from any other person to aid an investigation; (b) the data collected does not need to have any relationship with evidence required for the case; (c) the data is stored in a central database which can be accessed widely and not just in the case file; (d) the data is stored for 75 years (effectively, for life); and (e) safeguards have been diluted by lowering the level of the official authorised to collect the data. We discuss these issues below, and explore some of the consequences through a few examples.

Persons whose data may be collected

The Bill expands the set of persons whose data may be collected to include persons convicted or arrested for any offence. For example, this would include someone arrested for rash and negligent driving, which carries a penalty of a maximum imprisonment of six months. It also expands the power of the Magistrate to order collection from any person (earlier only from those arrested) to aid investigation. This differs from the observation of the Law Commission (1980) that the 1920 Act is based on the principle that the less serious the offence, the more restricted should be the power to take coercive measures.³ Note that the DNA Technology (Use and Application) Regulation Bill, 2019 waives the consent requirement for collecting DNA from persons arrested for only those offences which are punishable with death or imprisonment for a term exceeding seven years.²

Persons who may order data to be collected

Under the 1920 Act, a Magistrate may order data to be collected in order to aid the investigation of an offence.¹ The Law Commission (1980) remarked that the 1920 Act did not require the Magistrate to give reasons for his order.³ It observed that the ambit of the law was very wide (“any person” arrested in connection with “any investigation”), and refusal to obey the order could carry criminal penalties. It recommended that the provision be amended to require the Magistrate to record reasons for giving the order. The Bill does not have any such safeguard. Instead, it lowers the level of the police officer who may take the measurement (from sub-inspector to head constable) and also allows the head warder of a prison to take measurements.

What data may be collected

The Bill widens the ambit of data to be collected to include biometrics (finger prints, palm prints, foot prints, iris and retina scan), physical and biological samples (not defined but could include blood, semen, saliva, etc.), and behavioural attributes (signature, handwriting, and could include voice samples). It does not limit the measurements to those required for a specific investigation. For example, the Bill permits

taking the handwriting specimen of a person arrested for rash and negligent driving. It also does not specifically prohibit taking DNA samples (which may contain information other than just for determining identity). Note that under Section 53 of the Code of Criminal Procedure, 1973, collection of biological samples and their analysis may be done only if “there are reasonable grounds for believing that such examination will afford evidence as to the commission of an offence”.[\[8\]](#)

Biological samples

The Bill makes an exception in case of biological samples. A person may refuse to give such samples unless he is arrested for an offence: (i) against a woman or a child, or (ii) that carries a minimum punishment of seven years imprisonment. The first exception is broad. For example, it could include the case of theft against a woman. Such a provision would also violate equality of law between persons who stole an item from a man and from a woman.

Retaining data

The Bill allows retaining the data for 75 years. The data would be deleted only on the final acquittal or discharge of a person arrested for an offence. The retention of data in a central database and its potential use for the investigation of offences in the future may also not meet the necessity and proportionality standards.

Examples

The examples below illustrate some of the consequences of the provisions of this Bill.

Illustration 1. Person W is found guilty of rash and negligent driving (and fined Rs 1,000). He may have his signature collected and stored in a central database for 75 years. The Bill permits this.

Illustration 2. Person X is arrested for an offence. He refuses to give his fingerprints. He is charged with preventing a public servant from performing his duty (Section 186 of the Indian Penal Code, 1860). His fingerprints are forcibly taken under both cases. He is subsequently discharged from the original case. However, as he is guilty under Section 186 of the Indian Penal Code in the second case, his fingerprints can be stored for 75 years.[\[9\]](#) This implies that anyone who is arrested for any offence and refuses to give measurements can have their data stored for 75 years, even if they are acquitted in the main case.

Illustration 3. Person Y is arrested. The case goes on for 20 years through several

appellate levels (this is not unusual). His records will remain in the database for this period. He gets acquitted. He is arrested in another case just before the final acquittal in the first case. The records can be kept in the database until the second case is decided. This process can be continued through a third case and so on.

Illustration 4. Person Z defies Section 144 orders under the Code of Criminal Procedure, 1973 (unlawful assembly) and is arrested. His fingerprints are taken (the Bill does not require a connection between the measurement and the evidence needed for investigation).^[10] He is found guilty under Section 188 of the Indian Penal Code (disobeying an order of a public servant) and fined Rs 200.^[11] His fingerprints will be in the database for 75 years.

[1]. [The Identification of Prisoners Act, 1920](#).

[2]. [The DNA Technology \(Use and Application\) Regulation Bill, 2019](#).

[3]. [Eighty-Seventh Report on Identification of Prisoners Act, 1920](#), Law Commission of India, 1980.

[4]. [Committee on Reforms of Criminal Justice System Report \(Volume 1\)](#), Ministry of Home Affairs, March 2003.

[5]. [The Criminal Procedure \(Identification\) Bill, 2022](#).

[6]. [Justice K.S. Puttaswamy \(Retd\) vs. Union of India](#), W.P. (Civil) No 494 of 2012, Supreme Court of India, August 24, 2017.

[7]. Article 14, [The Constitution of India](#).

[8]. Section 53, [The Code of Criminal Procedure, 1973](#).

[9]. Section 186, [The Indian Penal Code, 1860](#).

[10]. Section 144, [The Code of Criminal Procedure, 1973](#).

[11]. Section 188, [The Indian Penal Code, 1860](#)



Conclusion

The Criminal Procedure (Identification) Bill, 2022 was introduced with the aim to streamline the physical and biometric identification process and to strengthen the forensic capacity of the bodies involved.

This Bill has the objective of allowing sufficient legal evidence to be collected which will help in establishing the crime of an accused person and increase the rate of prosecution while simultaneously making the prosecution process easier.

Though the objective of this Bill is laudable, it suffers from some glaring defects namely the violation of Fundamental Rights under Articles 14, 20 and 21 which have been guaranteed by the Indian Constitution.

Thus, it can be said that, though this Bill is a progressive step toward including science and technology in convictions and making the process of conviction more efficient and effective, it is not a perfect Bill and may require some necessary amendments to guarantee the protection of the Fundamental Rights.

REFERENCE CAN BE TAKEN FROM LINKS ATTACHED BELOW.

- <https://timesofindia.indiatimes.com/india/president-gives-assent-to-criminal-procedure-identification-bill/articleshow/90930552.cms>
- <https://www.barandbench.com/columns/be-good-the-underlying-mandates-and-implications-of-the-criminal-procedure-identification-bill-2022>

- <https://theleaflet.in/the-criminal-procedure-identification-act-2022-compromises-constitutional-rights/>
- <https://www.firstpost.com/india/explained-the-row-in-parliament-over-the-new-bill-that-lets-police-take-bio-samples-of-accused-10497841.html>

Note: Please note that nothing mentioned in this background may be used as an established fact in committee without the presentation of a credible source and substance mentioned. The guide may act only as a source for your basic understanding of the agenda.

Reiterating, kindly do not limit your research only to these points and feel free to broaden your horizons of research. This is just a list of topics you should cover and is a reflection of the direction in which we intend to see the flow of debate in the committee.

For any further queries kindly feel free to mail the Speaker directly at the email ID given above in the letter from the Executive Board.