

Review Article

Human Rights During and After the Criminal Trial in India: Legal Discourse

Vaibhav Kartikeya*

Advocate, India

Abstract

Code of Criminal Procedure 1973 (hereinafter 'CrPC') provides procedure for investigation, inquiry and trial in the criminal cases all over India. Parliament enacted the Criminal Procedure (Identification) Act 2022 on 18th April 2022 to provide certain safeguards to the State executive machinery for collection of measurements like finger-prints, physical and biological samples. The statement in Preamble of the Act aims to make the process of investigation more efficient through recording tools and their dissemination. This paper endeavours to state that the provisions for recording of samples like foot print, finger print, etc. is a part of general procedure for identification of common man, the records are always available in the State administrative departments and are a part of general administration by the State.

Keywords: Biological samples; Human rights; Identification mechanisms; Investigation; Trial; Privacy

Introduction

Code of Criminal Procedure 1973 (hereinafter 'CrPC') provides procedure for investigation, inquiry and trial in the criminal cases all over India. Parliament enacted the Criminal Procedure (Identification) Act 2022 on 18th April 2022 to provide certain safeguards to the State executive machinery for collection of measurements like finger-prints, physical and biological samples. The statement in Preamble of the Act aims to make the process of investigation more efficient through recording tools and their dissemination. This paper endeavours to state that the provisions for recording of samples like foot print, finger print, etc. is a part of general procedure for identification of common man, the records are always available in the State administrative departments and are a part of general administration by the State.

*Corresponding author: Vaibhav Kartikeya, Advocate, India E-mail: vaibhavkartikeya@gmail.com

Citation: Kartikeya V (2024) Human Rights During and After the Criminal Trial in India: Legal Discourse. Forensic Leg Investig Sci 10: 099.

Received: June 27, 2023; **Accepted:** July 09, 2024; **Published:** July 15, 2024

Copyright: © 2024 Kartikeya V. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Provisions for Identification of Persons at the Initiation Of Criminal Trial

There are supplemental laws to ensure efficient mechanism for implementation of provisions of CrPC. The Criminal Procedure (Identification) Act 2022 (hereinafter 'Identification Act 2022') is enacted in reference to the implementation of sections 53 and 53A of the Code of Criminal Procedure 1973. Section 3 of the Identification act 2022 describes the persons whose measurement could be obtained and the procedure therefor. There are several strands of persons and are classified in reference to the stages of criminal trial so it is necessary to have a introspection of these provisions in segregation. The provisions of identification of persons, described in section 3 of the Identification Act 2022, in the initiation process of criminal trial could be contemplated on following rationales:

1. The provision is specifically a matter of consent of the accused rather than procedure to be applied in every case;
2. It is necessary to exclude the operation of such a provision if some parts of it have already been substantially complied on authorization of the Government;
3. Such procedures are highly impactful For example, such a provision cannot be equated to the plethora of tests permitted for each person belonging to the group if a single individual is tested positive for corona. This is for the reason that the fact of accusation is far different from judgment of the Court in a criminal trial. Accusation for any act does not imply presumption of commission of an act(s) and thus cannot confer license of imposition of legal measures which are not imposable on a common man.
4. Even if some of these procedure could be permitted for a convicted offender, it should not be imposed for every offence like offences related to property, offences related to government coins, etc.
5. All these measures are so segregated that they do not form part of a single administrative measure rather they comprise measures employed for investigation like forensic sciences, medical techniques, etc.
6. The human rights instruments like Universal Declaration of Human Rights 1948 [1], International Covenant on Civil and Political Rights 1966, the International Covenant on Economic Social and Cultural Rights 1966 or the Aarhus Convention on Access to Justice [2] do not expressly provide for contain (prohibit) such measures, however they confer much importance to the integrity of a human being. Such measures could defy those human rights instruments when they intrude upon the privacy of any person [3]. Samples authorized for collection under the Act have potential to illustrate traits, symptoms, or diseases and any dissemination of such an information could have recursive and negative effect.
7. Such a measure could prejudice the sanctity of a criminal trial since is being conducted before trial.

8. In fact, the implementation of such measures would be an additional expenditure of the State Government;
9. Further, the establishment of institutions for conduct of such investigation mechanisms is difficult in remote areas like in villages located at Geedam or Barsur regions of State of Chhattisgarh;
10. These measures would require employment of additional police force to conduct the taking of samples;
11. It is difficult to subsequently erase those investigation data since those records are handed over to various Courts and judicial institutions from the trial to the stage of acquittal.
12. There will be plethora of investigative samples distinct from those utilized regular judicial procedures. Further, such taking of samples, their investigation, storage and dissemination would involve huge time and expenditure on the State;
13. Such procedures are ancillary to the mechanism for collection of records through National Register for Crimes in the United Kingdom and United States of America [4], however, they are of minimal significance for rendering justice to the litigants of a criminal trial;
14. In fact, several such records maintained by the crime control bureaus of the State reveal recurrence of offences like theft, liquor, narcotic drugs, etc. showing taking of such samples is only an ancillary measure for records rather than of prohibitory sanctions;
15. There are various stakeholders of immense significance which have been established to implement the procedure of CrPC and digitization of Court systems.
16. Such collection of physical or biological samples for the purposes of investigation could vitiate the attributes of criminal trial like conduct of Test Identification Parade, seizure, memorandum, eye witnesses, spot witnesses etc. through its advanced technological mechanisms;
17. It is pertinent to note that any of these measures are not included in the eCourts project or its report titled, “(Draft) Digital Courts Vision and Roadmap Phase III of the eCourts Project” prepared by the eCommittee of Hon’ble Supreme Court of India and released for public comments in May 2020 [5].
18. Subsection (8) of Section 320 of CrPC states that the compounding of an offence under the provisions of Section 320 of CrPC have the effect of acquittal of the accused. However, section 4 of the Act states that the National Crime Records Bureau¹ shall store the record of measurements in digital or electronic form for a period of seventy-five years from the date of collection of such measurement. This provision is in consonance with the age long record maintenance provisions of National Crime Register released by the Government at Centre in the month of January 2021. However, such maintenance of records or their dissemination are contrary to the measures of reformation and acquittal envisaged by our criminal justice system.

Section 3 of Identification Act 2022 On Persons Released On ‘Bond’

Section 3 of the Act states that any person who has been ordered to give security for his good behaviour or maintaining peace under

section 117 of the Code of Criminal Procedure, 1973 for a proceeding under section 107 or 108 or 109 or 110 of CrPC shall if so required, allow his measurement to be taken [6]. This provision is inclusive and includes all offences where the Probation of offenders Act or the concept of Plea Bargaining provided in Sections 265A to 265L of CrPC is applicable. However, the proviso specifies that the application of this provision could be liberalized or condoned in respect of biological samples for offences punishable with imprisonment of less than seven years. Physical samples are always the part of State repository of records of identification. In fact, maintenance of records for people released under the Probation of Offenders Act or the Plea Bargaining system is just a matter of procedure and could not restrain or deter crimes. Such measurements and their dissemination to law enforcement authorities interferes with the theories of rehabilitation and reformation of offenders and impinges on purview of their privacy.

Section 4 of The Identification Act 2022 And Persons Released On ‘Bond’

Section 4 of the Act specifically states that where any person has had his measurements taken according to the provision of the Act, is released without trial or discharged or acquitted by the Court, all records of measurements so taken be destroyed from records. Chapter VIII of the CrPC provides provisions on Security for Keeping the Peace and For Good Behavior. Section 106 of CrPC states the applicability of provisions for security extends to persons convicted for forming unlawful assembly, committing acts like rioting or assault with weapons, etc. These acts are punishable with imprisonment and are cognizable and non bailable offence [7]. But the fact of joint commission of the acts and its effect on general social order persuaded the legislature to provide provisions to restrain such persons. So, the provisions contained in Chapter VIII of the CrPC provides the measure of bond for offenders likely to commit offences, under trial and convicted offenders. Section 106 of CrPC States:

Security for keeping the peace on conviction

- When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.
- The offences referred to in sub-section (1) are- (a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof; (b) any offence which consists of, or includes, assault or using criminal force or committing mischief; (c) any offence of criminal intimidation; (d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.
- If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.
- An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

Section 107 of CrPC states: Security for keeping the peace in other cases

When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Sections 106 and 107 of CrPC thus states that the persons likely to commit breach of peace and person convicted for committing breach of peace could be released on security of bond for good behaviour. In fact, the Court is judicially empowered to release such convicts on their execution of 'bond' and such release could dispense with the procedure for regular criminal trial. Section 4 of the Identification Act 2022 specifically directs the State to delete all measurements taken in respect of persons who are released without trial. Thus all persons released under sections 106 to 110 of CrPC on security of bond are persons released without trial and would fall within the purview of section 4 of the Identification Act 2022. However, sub-section (b) of section 3 of the Identification act 2022 authorizes the State Governments to take measurements or samples of persons ordered to give security of bond under sections 107 to 110 of CrPC. Therefore, the provision to require recording of measurements of these persons under the former provision renders it contrary to section 4 of the Identification Act 2022. The text 'persons who are released without trial' in Section 4 is contrary with the former provision in section 3 of the Identification Act 2022 for the reason that these are specifically the persons released without trial for the offences and their measurements must be deleted instead of being authorized for records.

Provision of Self Incrimination Do Not Conflicts Identification Act

Hon'ble Supreme Court in *State of Bombay v. Kathi Kalu Oghad*, (AIR 1961 SC 1808) demonstrated that the taking of measurements of finger or palm do not conflicts the right against self incrimination provided in Article 20(3) of the Constitution of India. Court stated.

"We can therefore find no justification for thinking that "to be a witness" in Art. 20 (3) means to impart personal knowledge and find no reason for departing from what this Court said in *Sharma's Case* (1) that "to be a witness" is nothing more than "to furnish evidence", and such evidence be furnished through lips or by production of a thing or of a document or in other modes. The question then is : Is an accused person furnishing evidence when he is giving his specimen (1) [1954] S.C.R 1077. handwriting or impressions of his fingers, or palm or foot ? It appears to us that he is : For, these are relevant facts, within the meaning of s. 9 and a. 11 of the Evidence Act. Just as an accused person is furnishing evidence and by doing so, is being a witness, when he makes a statement that he did something, or saw something, so also he is giving evidence and so is being a "witness",

when he produces a letter the contents of which are relevant under s.10., or is, producing the plan of a house where a burglary has been committed or is giving his specimen handwriting or impressions of his finger, palm or foot. It has to be noticed however that Art. 20 (3) does not say that an accused person shall not be compelled to be a witness. It says that such a person shall not be, compelled to be a witness against himself. The question that arises therefore is : Is an accused person furnishing evidence against himself, when he gives his specimen handwriting, or impressions of his fingers, palm or foot ? The answer to this must, in our opinion, be in the negative. The matter becomes clear, when we contrast the giving of such handwriting or impressions, with say, the production of a letter admissible in evidence under s. 10, or the production of the plan of a burgled house. In either of these two latter cases, the evidence given tends by itself to incriminate the accused person. But the evidence of specimen handwriting or the impressions of the accused person's fingers, palm or foot, will incriminate him, only if on comparison of these with certain other handwritings or certain other impressions., identity between the two sets is established. By themselves, these impressions or the handwritings do not incriminate the accused person., or even tend to do so. That is why it must be held that by giving these impressions or specimen handwriting, the accused person does not furnish evidence against himself. So when an accused person is compelled to give a specimen handwriting or impressions of his finger, palm or foot, it may be said that he has been compelled to be a witness ; it cannot however be said that he has been compelled to be a witness against himself. This view, it may be pointed out, does not in any way militate against the policy underlying the rule against "testimonial compulsion" we have already discussed above. There is little risk, if at all, in the investigator or the prosecutor being induced to lethargy or inaction because he can get such handwriting or impressions from an accused person. For, by themselves they are of little or of no assistance to bring home the guilt of an accused. Nor is there any chance of the accused to mislead the investigator into wrong channels by furnishing false evidence. For, it is beyond his power to alter the ridges or other characteristics of his hand, palm or finger or to alter the characteristics of his handwriting. We agree therefore with the conclusion reached by the majority of the Bench that there is no infringement of Art.20(3) of the Constitution by compelling an accused person to give his specimen handwriting or signature; or impressions of his fingers, palm or foot to the investigating officer or under orders of a court for the purpose of comparison under the provisions of s.73 of the Indian Evidence Act; though we have not been able to agree with the view of our learned brethren that "to be a witness" in Art.20(3) should be 'equated with the imparting of personal knowledge or that an accused does not become a witness when he produces some document not in his own handwriting even though it may tend to prove facts in issue or relevant facts against him."

This reasoning of the Court is quite different from the proposition which renders an undertrial to give evidence of all those facts which are likely to incriminate him without the provisions of due process. Such provisions are an indispensable part of the procedure contained in the Narcotic and Psychotropic Substances Act 1986 , the Excise Act 1915 and the like statutes. These provisions specifically mandate the consent of the accused before taking any such samples and confers the right to be examined by a Magistrate instead of the officer who made the seizure. Similarly, the trial becomes vitiated if these provisions are not effectively brought to the knowledge of the examinee or if they are conducted in absence of the witnesses. Therefore the

provisions of Identification Act 2023 are contrary to those of Article 20(3) of the Constitution Of India.

Liability of Persons for Interference or Obstruction to the Recording of Measurements

Section 6 of the Identification Act 2022 provides that there should not be any interference against recording of measurements like finger print or foot print samples or any other physical or biological sample. Sub-section (2) of Section 6 further penalizes any such resistance or refusal to allow the taking of measurements in accordance with the provision contained in section 186 of the Indian Penal Code 1860. Section 186 of the Indian Penal Code 1860 provides for 'obstruction against the lawful authority of public servants'. Section 2 (b) of the Identification Act 2022 provides definition of the term 'measurement' and its purview is all-encompassing; it uses the terms physical and biological samples [8]. These terms includes samples to be experimented by the hand writing experts, thumb impression experts, forensic science experts and even medical science experts, since the term biological samples would permit the State to take blood samples also. Such taking of samples and their penalization if the person obstructs from taking those samples is requisite to be contemplated on following rationales:

1. Our criminal justice system requires consent of the accused before any interference with its liberty either by seizure or recording of statements under section 161 of CrPC, etc. Even the Magistrate requires an affirmative consent of the deposer under sub-section (5) of section 164 of CrPC which states that the deposition given before the Magistrate is without coercion and is not tampered by any threat or undue influence.
2. Further, if such measurements will be allowed without the consent of the accused, the whole procedure of criminal investigation would be vitiated. For example, the police will then be conferred power to take memorandum of accused under section 27 of the Evidence Act 1872 and such recovery would be liable to be resuracted by the accused by process of law. The seizure of substances like liquor, narcotic substances or mahua plants are admissible in evidence only if they are subject to identification by at least two spot witness. Even in many cases, in routine practice, the Courts are reluctant to convict or rely on the notarized colour photographs depicting the quantity of narcotic substances seized, villagers, the police officers and accused.

So, such procedures are not consistent with the rights provided in the CrPC to an accused person.

Conclusion

The Identification Act 2022 empowers the investigation machinery to take measurements like finger print, palm print, etc. These are the powers of wide amplitude and include both physical and biological samples like DNA profiling, etc. Even the scientific advancements have made it probable that the genes induce for commission of crime. However, scientific measurements could have devastating effect when applied on persons in practice. Such scientific experimentation and inferences conflict with the regular process of law because they interfere with the rights of liberty, privacy and due process contained in Article 21 of the Constitution of India. So, any such procedure against recording of measurements must be subject to the directions of the Court specifying physical or biological samples. Further, the penal procedure against taking of such measurements must be struck down subject to the judgment of D.K. Basu v. State of West Bengal. The provisions for taking measurements or samples of persons released on bond, discharged, arrested or detained in reference to the law of preventive detention must be obliterated from the provisions of Identification Act 2022. Such a procedure for investigation must therefore be subject to the orders of the Court of law for all offenders. Law is the product of human reason and is intimately related to the notion of purpose An analysis of the judicial method shows that law is not a body of rules, but an organic body of principles with an inherent power of growth.

References

1. Regulation (EC) (2006) Environmental information – public participation and access to justice (Aarhus Convention). Summaries of EU Legislation. Retrieved in Online.
2. Puttaswamy KS (2017) Civil Writ Petition. Status as a Fundamental Right. Retrieved in Online.
3. ANNUAL THREAT ASSESSMENT OF THE U.S. INTELLIGENCE COMMUNITY (2024) Retrived in Online.
4. Vision document for Phase III of eCourts Project (2022) e-Committee, Supreme Court of India Information and Communication Technology in Indian Judiciary. Retrieved in Online.
5. National Crime Records Bureau (2024).
6. Article 21 of the Constitution of India states (1950) 'No person shall be deprived of his life or personal liberty except according to the procedure established by law'. Retrieved in Online.
7. Ahmad SS, Patnaik GBJJ (1998) Air 1998 Supreme Court 1240::1998 Air Scw 1080. Supreme Court of India. Retrieved In Online.
8. Paton GW (1964) A Text-book of Jurisprudence. English Language Book Society and Oxford University Press. PP:: 4-9.



Advances In Industrial Biotechnology | ISSN: 2639-5665

Advances In Microbiology Research | ISSN: 2689-694X

Archives Of Surgery And Surgical Education | ISSN: 2689-3126

Archives Of Urology

Archives Of Zoological Studies | ISSN: 2640-7779

Current Trends Medical And Biological Engineering

International Journal Of Case Reports And Therapeutic Studies | ISSN: 2689-310X

Journal Of Addiction & Addictive Disorders | ISSN: 2578-7276

Journal Of Agronomy & Agricultural Science | ISSN: 2689-8292

Journal Of AIDS Clinical Research & STDs | ISSN: 2572-7370

Journal Of Alcoholism Drug Abuse & Substance Dependence | ISSN: 2572-9594

Journal Of Allergy Disorders & Therapy | ISSN: 2470-749X

Journal Of Alternative Complementary & Integrative Medicine | ISSN: 2470-7562

Journal Of Alzheimers & Neurodegenerative Diseases | ISSN: 2572-9608

Journal Of Anesthesia & Clinical Care | ISSN: 2378-8879

Journal Of Angiology & Vascular Surgery | ISSN: 2572-7397

Journal Of Animal Research & Veterinary Science | ISSN: 2639-3751

Journal Of Aquaculture & Fisheries | ISSN: 2576-5523

Journal Of Atmospheric & Earth Sciences | ISSN: 2689-8780

Journal Of Biotech Research & Biochemistry

Journal Of Brain & Neuroscience Research

Journal Of Cancer Biology & Treatment | ISSN: 2470-7546

Journal Of Cardiology Study & Research | ISSN: 2640-768X

Journal Of Cell Biology & Cell Metabolism | ISSN: 2381-1943

Journal Of Clinical Dermatology & Therapy | ISSN: 2378-8771

Journal Of Clinical Immunology & Immunotherapy | ISSN: 2378-8844

Journal Of Clinical Studies & Medical Case Reports | ISSN: 2378-8801

Journal Of Community Medicine & Public Health Care | ISSN: 2381-1978

Journal Of Cytology & Tissue Biology | ISSN: 2378-9107

Journal Of Dairy Research & Technology | ISSN: 2688-9315

Journal Of Dentistry Oral Health & Cosmesis | ISSN: 2473-6783

Journal Of Diabetes & Metabolic Disorders | ISSN: 2381-201X

Journal Of Emergency Medicine Trauma & Surgical Care | ISSN: 2378-8798

Journal Of Environmental Science Current Research | ISSN: 2643-5020

Journal Of Food Science & Nutrition | ISSN: 2470-1076

Journal Of Forensic Legal & Investigative Sciences | ISSN: 2473-733X

Journal Of Gastroenterology & Hepatology Research | ISSN: 2574-2566

Journal Of Genetics & Genomic Sciences | ISSN: 2574-2485

Journal Of Gerontology & Geriatric Medicine | ISSN: 2381-8662

Journal Of Hematology Blood Transfusion & Disorders | ISSN: 2572-2999

Journal Of Hospice & Palliative Medical Care

Journal Of Human Endocrinology | ISSN: 2572-9640

Journal Of Infectious & Non Infectious Diseases | ISSN: 2381-8654

Journal Of Internal Medicine & Primary Healthcare | ISSN: 2574-2493

Journal Of Light & Laser Current Trends

Journal Of Medicine Study & Research | ISSN: 2639-5657

Journal Of Modern Chemical Sciences

Journal Of Nanotechnology Nanomedicine & Nanobiotechnology | ISSN: 2381-2044

Journal Of Neonatology & Clinical Pediatrics | ISSN: 2378-878X

Journal Of Nephrology & Renal Therapy | ISSN: 2473-7313

Journal Of Non Invasive Vascular Investigation | ISSN: 2572-7400

Journal Of Nuclear Medicine Radiology & Radiation Therapy | ISSN: 2572-7419

Journal Of Obesity & Weight Loss | ISSN: 2473-7372

Journal Of Ophthalmology & Clinical Research | ISSN: 2378-8887

Journal Of Orthopedic Research & Physiotherapy | ISSN: 2381-2052

Journal Of Otolaryngology Head & Neck Surgery | ISSN: 2573-010X

Journal Of Pathology Clinical & Medical Research

Journal Of Pharmacology Pharmaceutics & Pharmacovigilance | ISSN: 2639-5649

Journal Of Physical Medicine Rehabilitation & Disabilities | ISSN: 2381-8670

Journal Of Plant Science Current Research | ISSN: 2639-3743

Journal Of Practical & Professional Nursing | ISSN: 2639-5681

Journal Of Protein Research & Bioinformatics

Journal Of Psychiatry Depression & Anxiety | ISSN: 2573-0150

Journal Of Pulmonary Medicine & Respiratory Research | ISSN: 2573-0177

Journal Of Reproductive Medicine Gynaecology & Obstetrics | ISSN: 2574-2574

Journal Of Stem Cells Research Development & Therapy | ISSN: 2381-2060

Journal Of Surgery Current Trends & Innovations | ISSN: 2578-7284

Journal Of Toxicology Current Research | ISSN: 2639-3735

Journal Of Translational Science And Research

Journal Of Vaccines Research & Vaccination | ISSN: 2573-0193

Journal Of Virology & Antivirals

Sports Medicine And Injury Care Journal | ISSN: 2689-8829

Trends In Anatomy & Physiology | ISSN: 2640-7752

Submit Your Manuscript: <https://www.heraldopenaccess.us/submit-manuscript>

Herald Scholarly Open Access, 2561 Cornelia Rd, #205, Herndon, VA 20171, USA.

Tel: +1 202-499-9679; E-mail: info@heraldopenaccess.us

<http://www.heraldopenaccess.us/>