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FROM PRISONERS TO SUSPECTS: RECONFIGURING STATE POWER UNDER THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

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I. ABSTRACT

The Criminal Procedure (Identification) Act, 2022 represents a significant transformation in India's framework of criminal identification by expanding the categories of individuals from whom biometric and biological data may be compulsorily collected. Unlike the Identification of Prisoners Act, 1920, which primarily targeted convicted persons and limited custodial categories, the 2022 legislation extends biometric extraction to individuals arrested, detained, or subjected to preventive proceedings. This structural shift marks a movement from a conviction-centric to a suspicion-based identification regime. This paper examines the constitutional implications of this transformation. It argues that the expansion of biometric authority reconfigures the relationship between suspicion, presumption of innocence, and State power. By integrating undertrials and preventive detainees into long-term biometric databases, the Act risks blurring the normative distinction between accusation and adjudicated guilt. The study evaluates the legislation through the lenses of Articles 14 and 21 of the Constitution of India, particularly the doctrines of proportionality, non-arbitrariness, and informational privacy. Using a doctrinal research methodology supported by statutory analysis and judicial precedents, the paper contends that while technological modernisation of investigation may serve legitimate objectives, the breadth and duration of biometric inclusion demand heightened constitutional scrutiny. The paper concludes that a calibrated framework incorporating differentiated safeguards and temporal limitations is necessary to preserve the constitutional balance between investigative efficiency and individual liberty.

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II. KEYWORDS

Biometric Governance; Presumption of Innocence; Criminal Procedure; Equality and Arbitrariness; Proportionality

III. INTRODUCTION AND RESEARCH PROBLEM

Criminal identification in India has historically been linked to conviction and penal administration. The Identification of Prisoners Act, 1920 operated within a framework that primarily authorised measurement of convicted persons and limited custodial categories. This colonial-era statute was repealed in 2022 and replaced by the Criminal Procedure (Identification) Act, 2022, which was notified on 4 August 2022. The 2022 legislation significantly expands the earlier framework by permitting biometric and biological data collection from a broader class of individuals, including arrestees and preventive detainees.

The research problem addressed in this paper is whether this legislative expansion shifting biometric authority from convicted prisoners to mere suspects constitutes a constitutionally sustainable reconfiguration of State power. Specifically, the study interrogates whether suspicion-based biometric inclusion undermines the presumption of innocence, whether the widened statutory net satisfies the requirements of equality and proportionality under Articles 14 and 21 of the Constitution of India, and whether the expanded regime remains compatible with the protection against self-incrimination guaranteed under Article 20(3).

The movement from prisoners to suspects marks not merely technological progress but a structural transformation in criminal justice philosophy. The constitutional validity of the Criminal Procedure (Identification) Act, 2022 is presently under challenge before the Delhi High Court, further underscoring the immediacy and practical significance of the issues examined in this study. This paper therefore seeks to evaluate whether such transformation remains consistent with foundational constitutional principles.

A. Research Objectives

The objectives of this study are:

1. To examine the structural shift from conviction-centric to suspicion-based biometric governance under the Criminal Procedure (Identification) Act, 2022.
2. To analyse the constitutional implications of expanded biometric authority under Articles 14 and 21 of the Constitution of India.
3. To evaluate whether the widened scope of biometric inclusion satisfies the doctrine of proportionality.
4. To assess whether differentiated safeguards are necessary to preserve the presumption of innocence.

B. Research Questions

The study seeks to answer the following questions:

1. Does the Criminal Procedure (Identification) Act, 2022 collapse the distinction between convicted offenders and suspects?
2. Is suspicion-based biometric retention compatible with the constitutional guarantee of presumption of innocence?
3. Does the Act satisfy the requirements of reasonable classification and non-arbitrariness under Article 14?
4. Are the duration and scope of retention proportionate to the legislative objective of investigative efficiency?

C. Research Hypotheses

The study proceeds on the following hypotheses:

1. The expansion of biometric authority under the Criminal Procedure (Identification) Act, 2022 disproportionately enlarges State power beyond what is constitutionally necessary.
2. The absence of differentiated safeguards for suspects and undertrials risks eroding the substantive meaning of presumption of innocence.

3. Uniform retention mechanisms applied across heterogeneous categories may invite scrutiny under Article 14 on grounds of arbitrariness.

D. Research Methodology

This study adopts a doctrinal research methodology. It is based on critical analysis of statutory provisions, constitutional jurisprudence, and comparative case law. Primary sources include the Criminal Procedure (Identification) Act, 2022, the Identification of Prisoners Act, 1920, and relevant judicial decisions of the Supreme Court of India. Secondary sources include academic commentary, Law Commission reports, and scholarly works on surveillance, criminal procedure, and constitutional law.

The research is qualitative in nature and aims to assess the constitutional sustainability of expanded biometric governance through interpretative and analytical methods.

E. Literature Review

Scholarly discourse on biometric governance has expanded significantly in recent years. Academic analysis has focused on three primary themes: self-incrimination, informational privacy, and surveillance-based criminal justice. Early jurisprudence such as *State of Bombay v Kathi Kalu Oghad* established a distinction between testimonial compulsion and physical evidence, shaping the doctrinal approach to identification. Subsequent scholarship has questioned whether this distinction remains adequate in the context of modern biometric technologies.

Privacy scholarship following *Justice KS Puttaswamy (Retd) v Union of India* has emphasised informational autonomy and the need for proportional safeguards in data collection regimes. Comparative literature, particularly arising from *S and Marper v United Kingdom*, has highlighted the constitutional concerns surrounding indefinite retention of biometric data of unconvicted persons.

A foundational institutional engagement with the Identification of Prisoners Act, 1920 appears in the Law Commission of India's 87th Report on the Identification of Prisoners Act, 1920 (1980). The Commission identified significant inadequacies in the 1920 framework, including its limited scope and outdated technological assumptions, and recommended statutory reform to accommodate scientific advances in criminal

investigation. Although the Report endorsed expansion of identification powers, it did so within a structured statutory framework and prior to the development of contemporary constitutional privacy jurisprudence.

The Statement of Objects and Reasons appended to the Criminal Procedure (Identification) Bill, 2022 emphasised the need to modernise identification processes and expand the ambit of “measurements” in light of technological advancement and investigative requirements. Parliamentary deliberations surrounding the Bill reflected concerns regarding privacy, proportionality, and the scope of police discretion. These legislative materials illuminate the State’s justificatory framework and form an essential part of the doctrinal analysis of the statute.

Indian academic commentary has examined the 2022 Act primarily through the lens of privacy and self-incrimination. However, existing scholarship has largely concentrated on discrete doctrinal questions rather than the structural reconfiguration of criminal categories. For instance, Gautam Bhatia’s work on transformative constitutionalism foregrounds proportionality and privacy but does not specifically address biometric governance within criminal classification frameworks. Similarly, privacy-focused analyses drawing upon Justice KS Puttaswamy (Retd) v Union of India and comparative discussions of *S and Marper v United Kingdom* have primarily interrogated data retention and informational autonomy, without systematically examining how the 2022 Act recalibrates the normative distinction between conviction and suspicion. Consequently, relatively limited attention has been devoted to analysing the structural transformation of criminal categories from convicted prisoners to suspects and its implications for equality and presumption of innocence.

IV. THE CHANGING SUBJECT OF CRIMINAL IDENTIFICATION

Criminal identification has historically been linked to the status of conviction. In classical criminal jurisprudence, the power of the State to subject individuals to intrusive identification measures was typically justified on the basis of established guilt or custodial status following conviction. Identification practices were therefore conceived as ancillary to punishment and penal administration rather than as

independent instruments of investigation.² Over time, however, technological advancements have expanded the scope and significance of identification within the criminal process. What was once a limited administrative tool has evolved into a central mechanism of data-driven policing.

The Identification of Prisoners Act, 1920 reflected this earlier paradigm.³ Enacted during the colonial period, the statute authorised the collection of fingerprints and photographs primarily from convicted prisoners and certain categories of arrested persons. The law was embedded within a penal logic: identification was linked to incarceration, repeat offending, and custodial supervision. Although the Act permitted limited extension to arrested individuals, its conceptual foundation remained anchored in the management of convicted offenders.

The Criminal Procedure (Identification) Act, 2022 departs markedly from this model. By broadening the definition of “measurements” and expanding the categories of persons from whom such measurements may be taken, the 2022 Act reorients criminal identification away from conviction and toward suspicion. Biometric and biological data may now be collected from individuals who are merely arrested or detained, including those who continue to enjoy the presumption of innocence. The establishment of a centralised repository under the National Crime Records Bureau further transforms identification into a long-term data governance framework rather than a case-specific evidentiary tool.⁴

This shift from a conviction-centric to a suspicion-based model has deep constitutional implications. In a system committed to the presumption of innocence, the extension of intrusive biometric measures to undertrials and arrestees alters the symbolic and legal status of such individuals. While arrest has always entailed certain temporary restrictions on liberty, the collection and long-term retention of biometric data produce enduring consequences that outlast the immediate investigation. Even in

² David Garland, *Punishment and Modern Society* (University of Chicago Press 1990) 120–130.

³ Identification of Prisoners Act 1920, ss 3–5.

⁴ Criminal Procedure (Identification) Act 2022, s 4.

cases of acquittal or discharge, the informational footprint created by biometric extraction may persist within State databases.

The transformation can therefore be understood as a reconfiguration of State power. Rather than confining identification to those whose guilt has been adjudicated, the 2022 Act extends the State's gaze to those merely suspected of wrongdoing. This expansion reflects broader global trends in preventive and intelligence-led policing, where data accumulation is justified as a means of anticipating and deterring crime. Yet the constitutional legitimacy of such expansion cannot be assumed. The widening of biometric authority raises foundational questions concerning equality, arbitrariness, dignity, and the limits of investigative discretion.

Importantly, the issue is not whether biometric technologies are useful. Scientific tools may enhance accuracy and reduce wrongful convictions when properly deployed. The constitutional concern arises from the breadth of the categories covered and the absence of clear differentiation between convicted offenders and those who have not been found guilty. By collapsing these distinctions, the law risks normalising suspicion as a sufficient basis for long-term data extraction.

This article argues that the movement "from prisoners to suspects" represents more than legislative modernisation; it constitutes a structural shift in the architecture of criminal power. The expansion of biometric authority must therefore be evaluated not merely in terms of efficiency but in light of constitutional principles governing fairness and proportionality. Through doctrinal analysis and institutional assessment, the article examines whether the widened scope of identification under the 2022 Act is compatible with the foundational values of the Indian Constitution.

V. THE IDENTIFICATION OF PRISONERS ACT, 1920: A CONVICTION-CENTRIC MODEL

The Identification of Prisoners Act, 1920 was enacted in a markedly different technological and constitutional context. Emerging during the colonial period, the statute reflected administrative priorities concerned primarily with the management of convicted offenders and repeat criminals. Its architecture was shaped by

penological considerations rather than investigative expansion. To understand the magnitude of change introduced by the Criminal Procedure (Identification) Act, 2022, it is essential to examine the structure and logic of the 1920 legislation.

The 1920 Act authorised the taking of “measurements” and photographs of certain categories of individuals through specific statutory provisions. Section 3 empowered police officers to take measurements and photographs of persons convicted of offences punishable with rigorous imprisonment for a term of one year or more. Section 4 extended this authority to certain arrested persons, particularly where the offence was punishable with rigorous imprisonment for a term of one year or upwards. Section 5 further enabled a Magistrate to order any person to allow measurements or photographs to be taken if such direction was considered expedient for the purposes of any investigation or proceeding under the Code of Criminal Procedure. These measurements were largely confined to fingerprints, footprints, and photographs forms of identification limited in scope and informational depth compared to modern biometric techniques. The conceptual emphasis nevertheless remained on individuals who had entered the penal system or were formally subject to custodial authority.

Importantly, the 1920 framework operated within a conviction-centric paradigm. The power to collect identifying data was justified on the premise that individuals who had been convicted – or were detained for serious offences – posed a continuing risk of recidivism. Identification was thus linked to penal administration and supervision. It functioned as a tool for managing known offenders rather than as a broad surveillance instrument targeting suspects as a class.

The Supreme Court’s early interpretation of identification practices under the colonial framework further reflects this restrained understanding. In *State of Bombay v. Kathi Kalu Oghad*, an eleven-judge Constitution Bench of the Supreme Court distinguished between testimonial compulsion and the taking of physical measurements, holding that the latter did not violate the constitutional protection against self-incrimination under Article 20(3).⁵ While the judgment legitimised certain forms of physical

⁵ *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1808.

identification, it did so within a context where the types of data collected were limited and transient. The Court's reasoning assumed that fingerprints and similar measurements were essentially neutral physical characteristics, not repositories of expansive personal information.

Another significant feature of the 1920 Act was the relative narrowness of retention practices. Although the statute did not elaborate detailed retention protocols by contemporary standards, the scale and technological capacity of data storage during that era were inherently limited. Identification records were maintained primarily for administrative and investigatory reference within a constrained system. There was no centralised, digital repository capable of indefinite retention or automated cross-matching across jurisdictions.⁶ The technological ecosystem thus acted as a practical limitation on the reach of State identification power.

The colonial origins of the 1920 Act also merit attention. Enacted under British administration, the statute formed part of a broader effort to systematise criminal records and enhance police efficiency.⁷ However, even within that framework, identification powers were tethered to penal status. The law did not conceptualise biometric extraction as a routine investigative tool applicable to all arrested persons irrespective of the gravity of offence or stage of proceedings. Its scope remained comparatively circumscribed.

The conviction-centric model embodied in the 1920 Act aligned with a traditional understanding of criminal justice, in which coercive State power intensified after adjudication of guilt. Arrest and pre-trial detention carried temporary restrictions, but long-term consequences were generally reserved for those convicted. Identification measures, therefore, operated as adjuncts to punishment and custodial management rather than as permanent markers imposed at the stage of suspicion.

This historical orientation is significant because constitutional jurisprudence concerning self-incrimination and procedural fairness developed alongside this narrower conception of identification. Judicial decisions distinguishing between

⁶ Law Commission of India, 87th Report on the Identification of Prisoners Act 1920 (1980).

⁷ Garland (n 1) 120–130.

testimonial and physical evidence assumed that physical identification involved limited informational intrusion. The jurisprudential balance struck by the courts reflected the realities of that era. It did not anticipate a regime in which biometric data could include iris scans, DNA profiles, and other sensitive biological information capable of revealing intimate and enduring details about an individual.

Thus, the Identification of Prisoners Act, 1920 represented a model in which the State's identification authority was linked primarily to conviction, custodial status, and penal management. Although not devoid of coercive elements, its reach was bounded by both statutory design and technological constraint. The Act did not collapse the distinction between convicted offenders and mere suspects; rather, it preserved a structural differentiation consistent with the presumption of innocence.

This conviction-centric paradigm provides the benchmark against which the 2022 legislation must be assessed. The expansion introduced by the newer statute cannot be understood merely as an incremental update. Instead, it reflects a qualitative shift in the categories of individuals subject to biometric extraction and in the conceptual relationship between suspicion and State data accumulation. The movement away from a penal-administration model toward a suspicion-based identification regime marks a significant reconfiguration of criminal power – one that invites constitutional scrutiny.

VI. THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022: ARREST, SUSPICION, AND PREVENTIVE INCLUSION

If the Identification of Prisoners Act, 1920 represented a conviction-centric model of criminal identification, the Criminal Procedure (Identification) Act, 2022 signals a decisive shift toward suspicion-based biometric governance. The transformation is not merely technological; it is structural. By expanding both the definition of permissible "measurements" and the categories of persons from whom such measurements may be taken, the 2022 Act reconfigures the relationship between investigative authority and individual status within the criminal process.

Section 3 of the 2022 Act authorises the taking of measurements from a wide range of individuals, including persons convicted of offences, persons ordered to give security for good behaviour, and crucially, persons arrested in connection with an offence.⁸ Unlike the 1920 Act, which primarily tethered identification to conviction and serious custodial situations, the 2022 framework normalises biometric extraction at the stage of arrest. Arrest, which in constitutional theory is a provisional measure pending investigation and adjudication, thus becomes a gateway to long-term biometric inclusion.

The expansion is further amplified by the broadened definition of “measurements.” The 2022 Act includes not only fingerprints and photographs but also iris and retina scans, biological samples, behavioural attributes and other examinations referred to in sections 53 and 53A of the Code of Criminal Procedure, 1973.⁹ This enlarged scope significantly increases the informational depth of data collected. While fingerprints reveal limited identity markers, biological samples—particularly DNA—carry sensitive and enduring personal information capable of revealing familial and genetic characteristics.

The shift from a penal-administration model to a suspicion-based model becomes particularly evident when examining the inclusion of undertrials and arrestees. Under the constitutional scheme, an accused person is presumed innocent until proven guilty.¹⁰ Yet, the 2022 Act subjects such individuals to biometric extraction that may be retained for extended periods. Section 4 empowers the National Crime Records Bureau to store measurements for up to seventy-five years, subject to limited exceptions.¹¹ Although the Act provides for deletion in certain circumstances, the default position favours retention rather than erasure.

This design represents a qualitative departure from the earlier legislative framework. The earlier model treated identification as ancillary to established penal status. The newer regime treats suspicion itself as sufficient ground for biometric incorporation

⁸ Criminal Procedure (Identification) Act 2022, s 3.

⁹ Criminal Procedure (Identification) Act 2022, s 2(1)(b); Code of Criminal Procedure 1973, ss 53, 53A.

¹⁰ *Narendra Singh v State of Madhya Pradesh* (2004) 10 SCC 699.

¹¹ Criminal Procedure (Identification) Act 2022, s 4.

into a centralised database. In doing so, it alters the symbolic and legal status of the accused. While the presumption of innocence remains doctrinally intact, the practical consequences of biometric extraction blur the distinction between conviction and suspicion.

The implications of this shift extend beyond individual cases. The creation of a centralised digital repository under the National Crime Records Bureau enables large-scale cross-referencing and data matching across jurisdictions.¹² The architecture is not merely reactive but potentially predictive, facilitating intelligence-led policing and preventive strategies. While such capabilities may enhance investigative efficiency, they simultaneously expand the visibility of individuals to the State in ways that outlast specific proceedings.

Preventive inclusion further complicates the constitutional landscape. The Act covers individuals ordered to give security for good behaviour under preventive provisions of criminal law. These individuals may not have been convicted of any offence; yet they are subject to biometric collection. The logic here is anticipatory rather than punitive. It reflects a preventive policing rationale that prioritises risk management over adjudicated guilt.

From a constitutional perspective, this widening of categories raises questions under Articles 14 and 21. The principle of equality before the law requires that distinctions between categories of persons be rational and non-arbitrary.¹³ By subjecting undertrials and preventive detainees to the same biometric regime as convicted offenders, the law risks collapsing meaningful distinctions in status. The absence of graduated safeguards based on the gravity of offence or stage of proceedings may invite scrutiny on grounds of proportionality.

The Supreme Court's privacy jurisprudence reinforces the need for such scrutiny. In *Justice K S Puttaswamy (Retd) v Union of India*, the Court affirmed that informational privacy forms an intrinsic part of the right to life and personal liberty under Article

¹² Criminal Procedure (Identification) Act 2022, s 4(2).

¹³ Constitution of India, art 14.

21.¹⁴ Any State action involving the collection and retention of personal data must therefore satisfy tests of legality, necessity and proportionality. When biometric extraction is extended to individuals who have not been convicted, the proportionality inquiry becomes particularly salient.

It is important to emphasise that the issue is not the legitimacy of scientific investigation per se. Modern forensic tools may reduce error and improve accuracy. The constitutional concern lies in the breadth of inclusion and the duration of retention. The transformation from prisoners to suspects signifies a structural recalibration of State power, whereby suspicion becomes a sufficient basis for long-term data incorporation. Such recalibration demands careful constitutional evaluation.

The 2022 Act thus represents more than legislative updating; it marks a shift in the subject of criminal identification. Where the earlier regime focused on those adjudicated guilty, the newer framework expands its reach to those merely accused or preventively bound. This reconfiguration alters the normative balance between investigative necessity and individual liberty, placing greater weight on anticipatory governance than on post-conviction administration.

Understanding this transformation is essential before turning to its constitutional implications. The next section therefore examines how this expanded biometric authority interacts with the presumption of innocence and the foundational principles of criminal justice.

VII. PRESUMPTION OF INNOCENCE AND THE EXPANSION OF STATE VISIBILITY

The expansion of biometric authority under the Criminal Procedure (Identification) Act, 2022 must be evaluated against one of the most fundamental principles of criminal jurisprudence: the presumption of innocence. The presumption operates not merely as a procedural rule but as a normative commitment that shapes the relationship between the individual and the State. It reflects the principle that

¹⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

suspicion, however strong, cannot be equated with guilt, and that coercive consequences must ordinarily follow adjudication rather than accusation.

The shift from a conviction-centric to a suspicion-based identification regime challenges this foundational premise. When biometric extraction and long-term retention are imposed at the stage of arrest, the practical consequences extend beyond the temporary deprivation of liberty traditionally associated with arrest. Biometric inclusion creates a durable informational record within State databases, potentially accessible across jurisdictions and over extended periods. The accused may ultimately be acquitted, yet the biometric footprint remains embedded within the investigative architecture.

The presumption of innocence has been recognised as intrinsic to fair trial guarantees under Article 21 of the Constitution.¹⁵ The Supreme Court has repeatedly affirmed that criminal procedure must operate in a manner consistent with dignity and fairness.¹⁶ While the presumption does not prohibit all investigative measures prior to conviction, it does require that such measures remain proportionate and limited to what is strictly necessary for investigation. When suspicion alone becomes the basis for indefinite data retention, the line between accusation and adjudication risks becoming blurred.

The concept of “State visibility” provides a useful analytical lens for understanding this transformation. In traditional criminal process models, visibility of the individual to the State intensified following conviction, particularly within custodial institutions. Identification records were tools of penal administration, tied to the management of known offenders. Under the 2022 Act, however, visibility expands at an earlier stage. Arrest becomes the trigger for biometric incorporation, shifting the point at which the State acquires enduring informational control over the individual.

This earlier visibility carries symbolic and practical consequences. Symbolically, it reclassifies the accused as a subject of long-term monitoring rather than temporary investigation. Practically, it creates a database presence that may influence future

¹⁵ Constitution of India, art 21.

¹⁶ *Maneka Gandhi v Union of India* AIR 1978 SC 597.

interactions with law enforcement. Even if not misused, the mere existence of biometric records within centralised systems alters the relationship between the individual and investigative agencies.

The Supreme Court's decision in *Selvi v State of Karnataka* offers instructive guidance.¹⁷ Although the case addressed narco-analysis and related techniques rather than biometric identification, the Court emphasised that compelled techniques which intrude upon mental or bodily integrity must be evaluated in light of dignity and autonomy. The reasoning underscores that investigative efficiency cannot override constitutional protections. While biometric collection may not involve testimonial compulsion in the classical sense, its informational depth and enduring retention require proportional justification.

The privacy judgment in *Justice KS Puttaswamy (Retd) v Union of India* further reinforces this analytical framework.¹⁸ The Court recognised informational privacy as an essential component of personal liberty and held that any restriction must satisfy tests of legality, necessity, and proportionality. Biometric data, by its very nature, is uniquely sensitive. Unlike ordinary identifying information, it is immutable and deeply personal. Once extracted and stored, it cannot be altered or meaningfully withdrawn.

The tension between presumption of innocence and suspicion-based biometric governance becomes especially pronounced in cases of acquittal. An individual who is found not guilty retains the formal status of innocence; yet their biometric data may remain within State repositories. This asymmetry raises normative concerns. If conviction justifies enhanced State control, the absence of conviction should, in principle, limit long-term informational retention. Otherwise, suspicion acquires consequences that resemble penal sanction.

It is true that modern criminal justice systems routinely employ investigative measures prior to conviction. Arrest, search, seizure, and forensic examination are well-established tools. However, most such measures are case-specific and temporally

¹⁷ *Selvi v State of Karnataka* (2010) 7 SCC 263.

¹⁸ *Puttaswamy* (n 15).

bounded. Biometric inclusion under the 2022 Act differs in its scale and duration. It integrates individuals into a continuing system of identification that transcends the immediate investigation.

The doctrine of proportionality provides a structured method for assessing this expansion. Under constitutional jurisprudence, any measure that restricts fundamental rights must pursue a legitimate aim, be suitable to achieve that aim, be necessary in the absence of less restrictive alternatives, and maintain a balance between individual rights and public interest.¹⁹ While enhancing investigative accuracy is a legitimate aim, the breadth of inclusion under the 2022 Act raises questions about necessity and balance. Could narrower retention periods, offence-based differentiation, or judicial oversight achieve similar objectives with reduced intrusion? These questions remain central to constitutional evaluation.

Moreover, the principle of equality under Article 14 intersects with presumption of innocence concerns. By treating convicted persons, undertrials, and preventive detainees under a broadly similar biometric regime, the statute risks insufficient differentiation between distinct legal statuses. The Constitution recognises that classification must bear a rational nexus to the object sought to be achieved.²⁰ When categories with fundamentally different normative positions are subjected to similar long-term consequences, the rationality of such classification warrants scrutiny.

The expansion of State visibility through biometric governance thus represents a structural shift in criminal justice philosophy. The system moves from one in which identification followed guilt to one in which identification precedes and potentially outlasts adjudication. This reordering of sequence alters the normative hierarchy between suspicion and conviction.

None of this implies that biometric identification is inherently unconstitutional. Rather, it suggests that the constitutional justification for such measures must be recalibrated in light of their widened scope. The movement from prisoners to suspects demands a careful reassessment of how presumption of innocence operates within

¹⁹ *Modern Dental College & Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

²⁰ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

data-driven criminal justice. If the presumption is to retain substantive meaning, investigative powers must remain proportionate, differentiated, and temporally constrained.

The next section examines whether the breadth of biometric authority under the 2022 Act satisfies constitutional requirements of equality and non-arbitrariness, and whether adequate safeguards exist to prevent disproportionate impact.

VIII. EQUALITY, ARBITRARINESS, AND THE RISK OF DISPROPORTIONATE IMPACT

If the expansion of biometric authority under the Criminal Procedure (Identification) Act, 2022 raises concerns relating to presumption of innocence, it also invites scrutiny under Article 14 of the Constitution. Article 14 embodies both the guarantee of equality before the law and the prohibition of arbitrary State action. While traditionally associated with classification analysis, the doctrine has evolved to include a broader prohibition against manifest arbitrariness in legislative and executive action.²¹ The widened scope of biometric inclusion must therefore be examined through the dual lenses of reasonable classification and non-arbitrariness.

At the level of classification, the 2022 Act brings within its ambit several distinct categories of persons: convicted offenders, persons ordered to furnish security for good behaviour, individuals arrested in connection with offences, and certain detainees.²² These categories occupy markedly different normative positions within criminal jurisprudence. A convicted offender stands at one end of the spectrum, having been adjudicated guilty after trial. An arrested individual, by contrast, may ultimately be acquitted or discharged. Preventive detainees represent yet another category, often subjected to measures based on anticipated rather than proven misconduct.

The constitutional question is whether subjecting these varied categories to broadly similar biometric consequences satisfies the test of reasonable classification. Under

²¹ Constitution of India, art 14; *Shayara Bano v Union of India* (2017) 9 SCC 1.

²² Criminal Procedure (Identification) Act 2022, s 3.

established jurisprudence, classification must rest upon an intelligible differentia and bear a rational nexus to the object sought to be achieved.²³ While the object of enhancing investigative efficiency is legitimate, the uniformity of long-term retention and centralised storage may not adequately differentiate between conviction-based and suspicion-based statuses.

The concern is not merely theoretical. When biometric data collected from undertrials and preventive detainees is stored alongside that of convicted offenders, the symbolic distinction between innocence and guilt becomes attenuated. Although the law may formally maintain these distinctions, the practical effect of data aggregation is to integrate diverse legal statuses within a single investigative architecture. This convergence risks diluting the normative weight attached to conviction as the threshold for enduring penal consequences.

The Supreme Court has recognised that arbitrariness is antithetical to equality. In *Shayara Bano v Union of India*, the Court affirmed that legislation can be invalidated on grounds of manifest arbitrariness where it lacks adequate determining principle or is excessive and disproportionate.²⁴ While the 2022 Act provides statutory authority for biometric collection, questions arise as to whether its breadth, particularly in relation to minor offences or preventive categories, is proportionately tailored to its objectives.

Discretion further complicates the equality analysis. The Act confers authority on law enforcement agencies to take measurements in a wide array of circumstances. Although statutory language frames this power within defined categories, its application in practice depends upon executive judgment. Where discretion operates without graduated safeguards or offence-based differentiation, the risk of uneven or selective application increases.

In data-driven policing systems, such discretion may have disproportionate effects on socially and economically vulnerable groups. Arrest patterns, preventive detention practices, and law enforcement attention are often not evenly distributed across populations. While the statute itself may not discriminate on its face, the combination

²³ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

²⁴ *Shayara Bano* (n 22).

of broad inclusion criteria and centralised retention mechanisms can amplify existing structural disparities. The equality inquiry under Article 14 must therefore extend beyond formal classification to consider practical consequences.

Judicial jurisprudence has emphasised that equality is not merely formal but substantive. In *Navtej Singh Johar v Union of India*, the Court reiterated that constitutional morality requires sensitivity to the impact of law on marginalised groups.²⁵ Although that case arose in a different context, the broader principle is instructive: legal frameworks must be assessed in light of their real-world implications. Where biometric inclusion mechanisms disproportionately affect certain communities due to patterns of arrest or preventive policing, constitutional scrutiny becomes particularly pertinent.

The doctrine of proportionality also intersects with arbitrariness analysis. As articulated in *Modern Dental College & Research Centre v State of Madhya Pradesh*, restrictions on rights must not be excessive in relation to the objective pursued.²⁶ When biometric data is retained for extended durations—potentially up to seventy-five years under the 2022 Act—the question arises whether such retention is necessary for all categories of individuals covered by the statute. A narrowly tailored retention framework, differentiated by offence gravity or case outcome, may achieve investigative objectives with reduced intrusion.

It is important to distinguish between facial invalidity and structural tension. The 2022 Act does not explicitly erase distinctions between categories; rather, it subjects them to a broadly similar regime of measurement and storage. The constitutional issue is whether this uniformity adequately accounts for the differing legal statuses and risk profiles of those included. If the law treats materially different categories in materially similar ways without sufficient justification, the rational nexus requirement may be strained.

At the same time, courts traditionally accord deference to legislative judgment in matters of criminal policy. Investigative efficiency and crime prevention are

²⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²⁶ *Modern Dental College* (n 20).

recognised as legitimate State interests. The equality analysis must therefore balance deference with vigilance. The fact that a measure serves a legitimate aim does not immunise it from scrutiny regarding breadth and proportionality.

The expansion from prisoners to suspects thus carries implications not only for presumption of innocence but also for equality jurisprudence. By widening biometric inclusion across diverse categories without granular differentiation, the Act risks conflating suspicion with conviction in functional terms. The equality guarantee under Article 14 requires that distinctions central to criminal justice—such as the difference between guilt and accusation—retain substantive significance.

The constitutional sustainability of the 2022 framework will ultimately depend upon how courts interpret and apply these principles in concrete cases. The next section turns to a broader normative evaluation, examining whether the expansion of biometric authority can be justified within a constitutional democracy committed to liberty and fairness.

IX. NORMATIVE ASSESSMENT: IS THE EXPANSION OF BIOMETRIC AUTHORITY CONSTITUTIONALLY JUSTIFIED?

The preceding analysis has demonstrated that the Criminal Procedure (Identification) Act, 2022 marks a structural shift in criminal identification from a conviction-based to a suspicion-based regime. The constitutional question, however, is not whether the shift exists, but whether it can be justified within a framework committed to liberty, equality, and proportional governance. A balanced normative assessment requires engagement with both the arguments in favour of expansion and the constitutional limitations that constrain State power.

A. Investigative Efficiency and Technological Modernisation

Proponents of the 2022 Act argue that expanded biometric collection enhances investigative efficiency. Modern forensic technologies, including DNA profiling and advanced biometric matching, can assist in identifying repeat offenders, linking crime scenes, and reducing wrongful convictions. In a criminal justice system burdened by

delays and low conviction rates, improved identification tools may serve legitimate public interests.

The Supreme Court has recognised that the State possesses a legitimate interest in maintaining public order and preventing crime.²⁷ Investigative measures that are lawful, proportionate, and scientifically reliable may therefore be constitutionally permissible. Biometric identification, when narrowly tailored and accompanied by safeguards, may contribute to accurate adjudication and reduce dependence on testimonial evidence.

Furthermore, the global movement toward data-driven policing reflects an evolving understanding of crime prevention. Many jurisdictions maintain centralised identification databases designed to facilitate cross-jurisdictional cooperation. From this perspective, the 2022 Act may be viewed as a modernisation measure aligning Indian criminal procedure with technological realities.

However, constitutional legitimacy does not rest on utility alone. Efficiency is a relevant consideration, but it cannot override fundamental rights. The Constitution requires that even well-intentioned legislation satisfy standards of necessity and proportionality.

B. Necessity and Least Restrictive Means

The principle of proportionality requires that a rights-restrictive measure must be necessary to achieve a legitimate aim and must not be more intrusive than required.²⁸ In the context of biometric governance, this principle demands inquiry into whether the breadth of inclusion and the duration of retention under the 2022 Act are indispensable to investigative objectives.

A key normative question arises: could narrower alternatives achieve similar goals? For instance, differentiated retention periods based on the gravity of offence or outcome of proceedings may reduce intrusion while preserving investigative value.

²⁷ *Kartar Singh v State of Punjab* (1994) 3 SCC 569.

²⁸ *Modern Dental College* (n 20).

Similarly, judicial authorisation for certain categories of biometric extraction could introduce an additional layer of scrutiny without impairing efficiency.

The current framework subjects a broad spectrum of individuals to biometric collection, including those arrested for offences that may not involve serious violence or organised crime. While arrest is a lawful exercise of police power, it does not necessarily imply enduring risk. Applying a uniform biometric regime across heterogeneous categories may exceed what is strictly necessary.

The Supreme Court in *Justice KS Puttaswamy (Retd) v Union of India* emphasised that proportionality analysis requires careful balancing between individual rights and State objectives.²⁹ Data collection measures must demonstrate not only legality but also minimal impairment of rights. When suspicion alone triggers long-term retention, the necessity requirement warrants close scrutiny.

C. Temporal Limits and the Problem of Duration

Duration of retention constitutes a critical component of proportionality. Under the 2022 Act, biometric data may be stored for extended periods, potentially up to seventy-five years.³⁰ Such retention effectively spans the lifetime of an individual. While long-term storage may assist in detecting repeat offending, its application to persons who are acquitted or discharged raises normative concerns.

Temporal limitation is central to constitutional restraint. Investigative measures that are justified at one stage may lose justification over time. Retention without periodic review risks converting a provisional investigative tool into a permanent marker of suspicion. Proportionality demands that duration correspond to demonstrable necessity rather than administrative convenience.

Comparative jurisprudence illustrates this point. In *S and Marper v United Kingdom*, the European Court of Human Rights held that indefinite retention of DNA profiles of unconvicted persons violated the right to respect for private life.³¹ Although not

²⁹ *Puttaswamy* (n 15).

³⁰ Criminal Procedure (Identification) Act 2022, s 4.

³¹ *S and Marper v United Kingdom* (2008) 48 EHRR 50.

binding in India, the reasoning underscores the importance of differentiation between convicted and non-convicted individuals in retention practices.

D. Balancing Public Interest and Constitutional Morality

Constitutional adjudication involves balancing competing interests. Public safety and crime prevention are legitimate aims. Yet constitutional morality requires that expansion of State power remain anchored to principles of fairness and dignity. The transformation from prisoners to suspects must therefore be evaluated not merely in utilitarian terms but in light of foundational commitments to the rule of law.

The State may argue that broader inclusion enhances deterrence and investigative preparedness. However, deterrence cannot justify unlimited expansion of coercive authority. The Constitution envisions a system where power is exercised within principled bounds, and where suspicion does not acquire the same normative weight as guilt.

A calibrated approach may reconcile these interests. Retaining biometric data of convicted offenders for extended periods may be justified. Applying identical retention to individuals never found guilty, however, strains the logic of proportionality. Differentiation, review mechanisms, and transparent deletion procedures would better align investigative objectives with constitutional guarantees.

E. Structural Reconfiguration and Constitutional Vigilance

Ultimately, the 2022 Act reflects a broader structural reconfiguration of criminal power. Identification is no longer an adjunct to punishment but a foundational component of investigative governance. The constitutional task is not to resist technological progress but to ensure that such progress remains subordinate to rights.

The movement from prisoners to suspects does not automatically render the statute unconstitutional. Rather, it necessitates heightened vigilance. Courts may interpret the Act in ways that preserve constitutional balance, emphasising proportional application and meaningful safeguards. Alternatively, legislative refinement may introduce clearer differentiation and oversight.

The normative assessment therefore yields a nuanced conclusion: expansion of biometric authority may be justified in principle, but only when accompanied by rigorous safeguards, temporal limits, and differentiated treatment of legal statuses. Absent such calibration, the widening of State visibility risks eroding the constitutional distinction between accusation and adjudication.

The final section synthesises these findings and articulates the broader constitutional implications of this transformation.

X. SUGGESTIONS AND RECOMMENDATIONS

1. Introduce differentiated retention periods based on conviction status and gravity of offence.
2. Provide automatic deletion mechanisms upon acquittal unless judicially authorised otherwise.
3. Mandate periodic review of retained biometric data.
4. Introduce offence-based thresholds for biometric extraction.
5. Strengthen procedural safeguards through independent oversight mechanisms.

XI. CONCLUSION: RECALIBRATING CRIMINAL IDENTIFICATION IN A CONSTITUTIONAL DEMOCRACY

The Criminal Procedure (Identification) Act, 2022 represents one of the most significant transformations in India's criminal identification framework since the colonial era. By expanding the scope of biometric collection from convicted prisoners to a broad spectrum of suspects, arrestees and preventive categories, the legislation reconfigures the architecture of investigative power. What was once a conviction-centric regime has evolved into a suspicion-based biometric governance model. This shift carries profound constitutional implications.

The movement from prisoners to suspects alters the normative relationship between suspicion and adjudicated guilt. Under the earlier paradigm embodied in the Identification of Prisoners Act, 1920, identification powers were closely linked to penal

status. Conviction functioned as the primary threshold for enduring State control. The 2022 Act, by contrast, normalises biometric extraction at the stage of arrest, thereby advancing the point at which individuals become permanently visible within State databases.

This structural shift does not automatically render the new regime unconstitutional. The Constitution does not prohibit the use of scientific tools in criminal investigation, nor does it prevent the State from modernising its forensic capabilities. Investigative efficiency and crime prevention are legitimate objectives within a democratic system. However, constitutional legitimacy depends not only on purpose but on design and implementation.

The presumption of innocence, equality before the law and the right to personal liberty together impose substantive constraints on suspicion-based governance. Where biometric inclusion precedes adjudication and extends beyond the life of a particular case, the risk emerges that suspicion acquires quasi-penal consequences. The durability of biometric data, coupled with centralised retention, creates informational effects that may outlast acquittal and blur distinctions central to criminal justice.

Article 14 demands rational differentiation between categories of individuals occupying materially different legal positions. Article 21 requires that intrusions into bodily and informational autonomy satisfy tests of fairness and proportionality. These constitutional commitments do not foreclose biometric governance but insist upon calibrated application. Differentiated retention policies, meaningful deletion mechanisms, and context-sensitive safeguards would better reflect the hierarchy between conviction and suspicion.

The transformation examined in this article reflects broader global trends toward data-driven and preventive policing. Yet constitutional democracies must remain attentive to the symbolic and practical consequences of expanding State visibility. The distinction between a convicted offender and a mere suspect is not a technicality; it is a foundational safeguard against premature stigmatisation and enduring state control.

The Criminal Procedure (Identification) Act, 2022 thus stands at a constitutional crossroads. Interpreted narrowly and applied proportionately, it may enhance investigative capacity while respecting foundational principles. Applied broadly and without differentiation, it risks reconfiguring suspicion into a lasting administrative status. The ultimate task of constitutional adjudication will be to ensure that technological modernisation does not erode the presumption of innocence or collapse the normative boundary between accusation and guilt.

In a constitutional democracy committed to liberty and fairness, the expansion of identification powers must remain tethered to principled limits. The journey from prisoners to suspects marks a significant chapter in India's evolving criminal jurisprudence. Whether this reconfiguration strengthens or strains constitutional governance will depend upon how courts, legislatures and institutions respond to the delicate balance between security and freedom.

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