



# REBOOTING INDIAN JUDICIARY: A KICK START WITH REFORMS IN CRIMINAL JUDICIAL SYSTEM

*The Government of India made a decisive intervention to reform the criminal justice system, in 2022, after 100 years of its criminal legal framework being introduced by the colonial masters. The new Criminal Procedure (Identification) Bill, 2022 will not only aim at decolonisation of the Indian judiciary but also rebooting it by updating with technological innovations and professionalisation of legal agencies. Government must continue to reform the judiciary in order to make it more accessible and affordable to every citizen in the country. Thus, the judiciary should address the contemporary needs and aspirations of the people.*

## Introduction

India emerged as a successful democracy after 75 years of Independence but has yet to come out of the colonial hangover in certain crucial aspects such as the judicial system and its governing laws. Lord Cornwallis (Governor-General for 1786-1793) had introduced the judicial reforms in India in the 1780s and modern judicial proceedings are drawn from such colonial lexicon, analysing the nature of the Indian judiciary after Independence, Narayan (1999) observes that “however, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society” (p.423). The same holds the truth for our judicial system even today. Sachar (1999) also expresses the need for judicial reforms in advocating for objectivity and fairness in the judicial functioning in India. Further, Rajan (1983) highlights the issues of “functional accountability in criminal justice administration” faced by the (police) investigating agencies in India. “The principal purpose of criminal justice administration is to preserve and protect the Rule of Law which implies enforcement of law, maintenance of order, fair trial and punishment of offenders, and their social rehabilitation through correctional system of justice” (Roy & Mishra, 1997, p.795). Thus, the criminal justice administration plays a vital role in sustaining the democracy in India.

## Reform for Rebooting the Legal Framework

In recent conference of Chief Ministers and Chief Justices of High Courts on 30th April 2022, Prime Minister Narendra Modi called for “easy and speedy justice for all” before India completes 100 years of its Independence (Chaturvedi, 2022). In an attempt to overhaul the legal system, the Home Minister of India, Amit Shah has introduced “the Criminal Procedure (Identification) Bill, 2022” to replace the existing “the Identification of Prisoners Act, 1920”. This initiative reflects the robust legislative intervention for legal reforms in a century-old judicial system. Now, the Criminal Procedure (Identification) Bill, 2022 has been passed by Parliament (on 4th April 2022 by Lok Sabha and on 6th April, 2022 by Rajya Sabha). The passage of this bill attracts the academic scrutiny for better assessment of its merits and demerits. Moving the Bill, Shah said it was being brought as the Identification of Prisoners Act, 1920, “has become kalbahya (obsolete) from the point of view of time and science”. “The Criminal Procedure (Identification) Bill, 2022, will not only fill those obsolete gaps... but it will also widen the scope of evidence for conviction” (Sharma, 2022, para 2).



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

1920 Act	Changes in the 2022 Bill
<b>Data permitted to be collected</b>	
<ul style="list-style-type: none"> <li>Fingerprints, foot-print impressions, photographs.</li> </ul>	<ul style="list-style-type: none"> <li>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).</li> </ul>
<b>Persons whose data may be collected</b>	
<ul style="list-style-type: none"> <li>Convicted or arrested for offences punishable with rigorous imprisonment of one year or more.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<ul style="list-style-type: none"> <li>Persons ordered to give security for good behaviour or maintaining peace.</li> </ul>	<ul style="list-style-type: none"> <li>Persons detained under any preventive detention law,</li> </ul>
<ul style="list-style-type: none"> <li>Magistrate may order in other cases collection from any arrested person to aid criminal investigation.</li> </ul>	<ul style="list-style-type: none"> <li>On the order of Magistrate, from any person (not just an arrested person) to aid investigation.</li> </ul>
<b>Persons who may require/ direct collection of data</b>	
<ul style="list-style-type: none"> <li>Investigating officer, officer in charge of a police station, or of rank Sub-Inspector or above,</li> </ul>	<ul style="list-style-type: none"> <li>Officer in charge of a police station, or of rank Head Constable or above. In addition, a Head Warder of a prison,</li> </ul>
<ul style="list-style-type: none"> <li>Magistrate</li> </ul>	<ul style="list-style-type: none"> <li>Metropolitan Magistrate or Judicial Magistrate of first class. In case of persons required to maintain good behaviour or peace, the Executive Magistrate.</li> </ul>

Note: CrPC - The Code of Criminal Procedure, 1973. Sources: PRS Legislative Research Report, 2022.

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*As Gladstone observed, the proper function of a government is to make it easy for the people to do good, and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behaviour in society is swift punishment*

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The new Bill aims at professionalization and decentralization of criminal justice administration by equipping the investigating agencies with the help of advanced science and technology such as forensic evidence and creating data sets/records with the help of the National Crime Records Bureau (NCRB). The effective and efficient legal framework is very essential for the maintenance of law and order in the society.

The comprehensive review of criminal justice is a robust exercise of decolonizing the legal system in India. The Home Minister also emphasized, in his letter all the MPs, that “the government of India intends to create a people-centric legal structure” which will be in accordance with the “contemporary needs and aspirations” of the people (Joy, 2022, para 3-4). Accordingly, the new bill has the provisions for using technology such as fingerprints and DNA samples which will make the criminal justice administration attend the modern means of investigation and speed up the procedures in nabbing the culprits.



**Concerns of Privacy and Datafication of People**

The dissenting voices against this new Bill raised the question of privacy and the collection of biological samples of the people. The storage of such data until acquittal or even after acquittal seems to be opaque for many Parliamentarians and civil society members as well. The important thing to notice in these concerns is that the right to privacy has been recognised as a fundamental right by the Supreme Court (2017). It is also argued that this Bill gives unprecedented powers to the police against the people in the investigation process itself.

However, there is a need for decolonizing the judicial system codified by the colonial rulers in India. Asha (2018) aptly points out that the colonizers imposed the penal code of the 1860s and modern laws on the colonized nations in an exploitative manner. “Therefore it can be said that, during the colonial period, law in fact served the ‘civilizing mission’ of colonialism by transforming the societies of the Third World into the form of the west” (Merry, 1991 cited in Asha, 2018, p.656). The Criminal Procedure (Identification) Bill, 2022 is a kick start towards decolonizing the legal framework in India and building a robust legal system that will be Indian in form and content.



In addition, the judicial reforms should address the “Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act” and also the question of judicial appointments, creation of all India Judicial Services, and specialized courts or Tribunals for various legal disputes in accelerating the speedy delivery of justice to all, especially the poor and the marginalised.

### Conclusion

The step to reform the criminal justice system is a welcoming initiative to overhaul the Indian judiciary. Updating the criminal justice administration with technological tools such as datafication of biometrics, DNA samples, and other forensic evidence will not only strengthen the investigation agencies but also aid in easy and speedy delivery of justice to the people. Decentralisation and professionalisation of the criminal justice administration is a foundational stone towards decolonising the Indian judiciary and its functioning as well. Thus, India can have an affordable and accessible judicial system for the poor and marginalised sections of the country.

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