LAW COMMISSION OF INDIA

EIGHTY - SEVENTH REPORT

ON

IDENTIFICATION OF PRISONERS ACT,1920

1980

Justice P.V. DIXIT,

CHAIRMAN

LAW COMMISSION
GOVERNMENT OF INDIA

New Delhi, August 29, 1980.

My dear Minister,

I am herewith sending the Eighty-seventh Report of the Law Commission on 'Identification of Prisoners Act, 1920'.

2. The object of the Act is to provide legal authority for the taking of measurements of finger impression, foot-prints and photographs of persons convicted of or arrested in connection with certain offences. Since the enactment of the Act some sixty years back, there has been much advancement in the scientific use of finger impressions, measurements of foot-prints and other limbs of the body, photographs in detection of crimes. It is, therefore necessary to revise the Act so as to make it correspond with modern trend in criminal investigation. In its Report, the Law Commission has suggested several amendments of the Act in that direction.

3. Our chief debt is owed to Shri P.M. Bakshi, Member-Secretary, who prepared the Report. The assistance given by Shri V.V. Vaze must also be acknowledged with thanks.

With regards,

Yours sincerely,
Sd/—
(P.V. DIXIT)

Shri P. Shiv Shanker,
Minister of Law, Justice &
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New Delhi.

CONTENTS

CHAPTER 1

INTRODUCTORY

Genesis of the Report and scope.

1.1. In view of the importance in the field of criminal investigation of the Identification of Prisoners Act, 1920, it has become necessary to have a fresh look at the Act, enacted some 60 years back, and to revise it so as to make it correspond with modern trends in criminal investigation. That apart, a suggestion has been made by the Supreme Court in a recent judgement[1] for amending the law relating to identification in regard to the particular point which was before the Court[2].

On an examination of the Act, it was found that the entire Act needed to be reviewed. Accordingly, this Report deals with the whole of the Identification of Prisoners Act, 1920.

Comprehensive examination not undertaken previously.

1.2. The Act of 1920 was drafted to meet certain difficulties that had been felt in the immediate past before its enactment. As often happens with legislation drafted to meet an immediate need[3], a comprehensive examination of the area to which the Act of 1920 related was not undertaken at the time of its enactment. This is amply borne out by the many local amendments made in the Act by several States. Revision of the Act on an All India basis has not been undertaken so far. Such a review appears to be called for on account of many reasons, one of them being the practical difficulty pointed out in the judgement of the Supreme Court[4].

Scope of legal discussions so far.

1.3. Legal discussions in India during the past 20 years or so concerning various measures of identification adopted by the police have centred mainly on the constitutional prohibition against self-incrimination laid down in Article 20(3) of the Constitution,—or some-times on the value of a particular species of identificatory evidence. The effect of the constitutional prohibition is now, as a result of a series of judgements of the Supreme Court, fairly clear. So far as is relevant to the present discussion, it can be stated that compulsion to procure "non-communicative" evidence is not prohibited by the Constitution.

As regards the value of particular species of identificatory evidence, again, the position is now fairly clear as a result of decisions of various courts.

Need to focus attention on legal aspect.

1.4. But the very fact that constitutional issues have, in the past, loomed large in the case law on the subject has obscured one important aspect of the general law, namely, that the slightest interference with the body or use of force to compel the furnishing of even non-communicative material requires a statutory authority, in the absence of which such action would *prima facie* attract tortious liability. Once this aspect is borne in mind, the need for clear and specific statutory provisions on every step that the police or any other investigating agency proposes to take in this area cannot be disputed. It is on this aspect, therefore, that a pretty large part of the discussion to be found in some of the succeeding chapters of this Report will necessarily concentrate.

Coercive measures adopted in investigation.

1.5. The process of investigation of offences is essentially one of the collection of factual material needed for the ascertainment of past events. In modern times the process by its very nature must enlist the services of several scientific disciplines. Information relevant to the process comes to the police in different ways and, in gathering scientific evidence, different types of coercion may have to be applied. But there is one general legal principle which, though elementary, requires to be pointed out. That is the principle that in a country governed by the rule of law such coertion must have specific legal sanction.

Hence the need for provisions clearly demarcating what coercive measures can be adopted in investigation.

Powers of the police.

1.6. The police do have powers of arrest in specified cases. But mere arrest does not give a right to search[5] the person or to take other coercive measures of interference with the person. This rule of the common law is the implicit assumption underlying the Act, and forms the basis for specific and precise provisions on the matters concerned[6]. This Report seeks to examine how far those provisions are in need of improvement.

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[1] *State of U. P.* v. *Ram Babu Misra*, (1980) 2 S.C.C. Part 3, pages 343, 346, para 8 (issue dated May 1980).

[2] Para 5·25, *Infra*.

[3] Chapter 2, *infra*.

[4] Para 1·1, *supra*.

[5] *The King* v. *Queen*, (1968) 3 W.L.R. 391, 394-H, 398 (P.C.).

[6] See, further Chapter 2, *infra*.

Need for balance.

1.7. The Report is therefore concerned with coercive measures employed in the investigative process. In the formulation of such coercive measures, a balance has to be struck between the rights of an individual and the imperative need in the interests of the society for the protection and punishment of crime. This is not an easy task. It is beset with difficulties.

There are in conflict two competing interests—the interest of the citizen to be protected from invasion of his physical privacy and the interest of the State to secure evidence which has a bearing upon the commission of crime are in conflict.

Reconciliation of the two is the basic problem. Of course, we are here using the expression "privacy" as indicating those values which a civilised society would like to cherish for protecting the human desire for secrecy and anonymity as also for freedom from physical interference. The discussion is not intended to imply that such a right in all its amplitude is recognised in Indian law.

Article 21 of the Constitution—procedure established by law.

1.8. Besides the above general consideration which emphasises the need to reconcile two conflicting interests, it is proper to mention that we have, in formulating our recommendations, borne in mind the developing law relating to the concept of "procedure established by Law" under Article 21 of the Constitution[1].

Recent years have witnessed a judicial construction of this concept that adds a new dimension to the Article[2]. The effect of decisions of the Supreme Court—to state it very broadly—is that it is not enough that the action of the State conforms to the fundamental rights guaranteed by other provisions in Part III of the Constitution. State action must also satisfy the test of Article 21, and can be challenged if it restricts personal liberty in a manner that violates the requirement of "procedure" established by law, as construed judicially.

Guidelines in judicial pronouncements.

1.9. This is a comparatively recent development and not all the aspects of legislation restricting personal liberty have yet come before the courts for being tested in the light of the criteria[3] laid down by the Supreme Court[4]. One cannot, therefore, with very great confidence, assert that this or that restriction on personal liberty would, or would not, meet the criteria so laid down. However, such guidelines as are available from judicial pronouncements on the subject rendered so far[5] have been kept in mind by us in formulating our recommendations. We have considered this to be particularly necessary, since the subject touches a sensitive area of human rights—bodily integrity and interference with it at the instance of the State, although such interference may be in the cause of the prevention and detection of crime.

Scheme of discussion.

1.10. In order to obtain a proper perspective of the subject matter of the Act, we propose to deal first with its significance, its general scheme and its history, and then to proceed with an examination of its provisions. These provisions fall into three main categories—(*i*) preliminary, (*ii*) operative[6], and (*iii*) incidental[7]. The territorial extent of the Act and the definitions given in the Act, which constitute the preliminary provisions, will be taken up first, followed by a review of the operative provisions. We shall conclude our Report by a consideration of the incidental provisions of the Act.

Constitutional competence.

1.11. Some of the matters that fall to be considered in this Report involve an examination of one important constitutional question—how far does the subject matter of the Act fall within the competence of Parliament ? We shall deal with this question in due course[8], when we commence our detailed consideration of the Act. However, by way of anticipating our conclusion, we may state that, in our view, Parliament is competent to legislate on the matters which are, at present, dealt with in the Act of 1920 as also on the matters in regard to which we are, in this Report, proposing an addition to the law.

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[1]See Appendix 3.

[2]See Appendix 3.

[3]Para 1·8, *supra*.

[4]Appendix 3.

[5]Appendix 3.

[6]Para 3·13, *infra*.

[7]Para 3·13, *infra*.

[8]Paragraphs 4·3 to 4·8, *infra*.

CHAPTER 2

HISTORICAL

2.1. As enacted, the Act gives importance to three species of evidence—finger-prints[1], measurements and photographs. Of these three, historically speaking, finger-prints are the most important. It is well known that the science of finger-prints originated in India, Sir William Herschel of the Indian Civil Service and Sir Francis Galton being the scientists who systematised it. The use of finger-prints for the investigation of crime is now a common method all over the world. It has been stated : Fingerprints.

> "Although the use of finger-prints for identification is said to have been known to the ancient Egyptians, its place in Anglo-Saxon jurisprudence was not established until after the middle of the ninteeth century. The Bertillon system of identification which includes photographs, finger prints and measurements of the body, is of a still more recent date. This system as used in Criminal Law has two main purposes. The first is the identification of the accused person as the person who committed the crime with which he is charged, and the second is the identification "of an accused as the same person who has been charged with or is convicted of other crimes. For this second purpose the police of most of the cities of this country (U.S.A.) and Europe attempt to keep the description of every person arrested by them, in permanent records. These records are popularly known as 'rogues' galleries'."[2]

2.2. One of the leading cases in Australia illustrates the importance of fingerprints. The appellant had been convicted of house-breaking. The only evidence against the appellant depended upon a comparison of one of several finger-prints on a bottle (which was in a shop when broken into), with a print of the middle finger of the appellants' left hand taken in goal. The High Court refused leave to appeal against the conviction observing as follows :— Case in Australia.

> "Signatures have been accepted as evidence of the identity *as long as they have been used*. The fact of the individuality of the corrugations of the skin on the fingers of the human hand is now so generally recognised as to require very little, if any, evidence of it, although it still seems to be the practice to offer some "expert evidence on the point. *A finger-print is therefore in reality an unforgeable signature*. This is now recognised in a large part of the world and in some parts has been for centuries."

2.3. At this stage, we would like to quote the statement of Objects and Reasons annexed to the Bill which became the Act of 1920. The reasons for the enactment of the Act are thus given in the Statement of Objects[4] : Statement of objects and Reasons.

"STATEMENT OF OBJECTS AND REASONS"

> "The object of this bill is to provide legal authority for the taking of measurements, finger impressions, foot-prints and photographs of persons convicted of, or arrested in connection with, certain offences. The value of the scientific use of finger impressions and photographs as agents in the detection of crime and the identification of criminals is well known, and modern developments in England and other European countries render it unnecessary to enlarge upon the need for the proposed legislation."

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1. See definition of "measurements".
2. Annotation, Right to Take Finger Prints and Photographs of the Accused (1933) 83 I.L.R. 127.
3. *R. v. Parker*, (1912) 14 C.L.R. 680 (Australia).
4. Gazette of India (1920), Part V, page 162.

"The existing system by which the police in India take finger impression, photographs etc., "of criminals and suspected *criminals is void of legal sanction*, except as regards registered members of criminal tribes, in whose case provision exists for the taking of finger impressions in section 9 of the Criminal Tribes Act, [1]1911 (III of 1911). The need for legalising the practice *has long been recognised, but it was not thought expedient to take the matter up so long as no practical difficulties arose.* Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken. With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of police work in India as elsewhere, on a regular footing. No measurement, etc., of any person will be taken compulsorily unless that person has been arrested.[2]

History of section 5

2.4. We shall have occasion to deal in detail with the history of certain points of particular relevance to section 5, in this Report.

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[1]. Criminal Tribes Act, 1911.

[2]. Paragraphs 5·21 and 5·22, *infra*.

CHAPTER 3

SIGNIFICANCE OF THE ACT : ITS GENERAL SCHEME AND ANALOGOUS LAWS

1. *Significance*

3.1. At this stage, a few words about the significance of the provisions of the Act of 1920 in the general context of the Indian Legal system would be appropriate. Significance.

3.2. The principal object of the Act of 1920 is to permit the taking of certain coercive measures in order to facilitate the "identification" of— Object of coercive measures and relationship to criminal procedure.

(1) convicts,

(2) persons arrested in connections with certain offences, and

(3) persons ordered to give security in certain cases.

THESE MEASURES constitute the means sanctioned by the Act. The object, of course, is to facilitate the identification of criminals or suspected criminals. The measures themselves are connected with the subject of "criminal produdure"— an aspect to which we shall advert later.[1]

3.3. Modern writers on criminology now use the word "criminalistics" to denote the use of scientific techniques in the investigation of crime.[2-3] It is an applied science devoted to the application of the natural sciences for the purposes of law enforcement. In U.S.A., criminalistics has been defined as that part of that aspect of police work which involves the collection and processing of physical evidence.[4-5] Criminalistics and physical evidence.

3.4. Much of such evidence can be obtained without requiring the arrested person to exhibit the body or otherwise to participate physically. But certain types of evidence can be secured only by his active physical participation and the Act provides the statutory authority for requiring the accused to do so. In this sense, the Act is of considerable importance in the realm of the law of torts, since the rules recognised by that law confer protection against physical interference without lawful authority. Relationship of the Act to the law of Tort.

3.5. The object of the Act being to procure evidence, its vital bearing on the law of evidence is obvious. But the evidence procured is of a special nature, being somewhat different from oral or documentary evidence which constitutes the usual species. The material sought to be procured with the help of the coercive measure sanctioned by the Act is really in the nature of demonstrative evidence[6]. Relationship of the Act to the Law of Evidence.

3.6. The object of all evidence is to re-create the events that led to the controversy now under trial. Its goal is to appeal to the five senses of the presiding officer, so that he may (on the disputed facts) arrive at a conclusion from what he perceives by those senses. This is sought to be achieved, in practice, by a variety of means constituting several species of evidence. Object of evidence.

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[1]Para 3·3. *infra*.

[2]Cf. Grassberger, University Teaching of Social Sciences (UNESCO) (1957), page 62.

[3]See also Sutherland and Cressey, Criminology (1968), pages 348, 349, reserring also to Ohara and O'sterling, Introduction to Criminalistics.

[4]Bennett Sandler, Law Enforcement and Criminal Justice (1979), page 127.

[5]As to the term "physical evidence", see note in (1964) 80 L.Q.R. 18.

[6]See para 3·9, *infra*.

Vital question in a criminal case.

3.7. The ultimate and most vital question in a criminal trial is—

Are the accused person and the person characterised as having committed the crime one and the same person? The question is most commonly answered in one of the two ways[1] :

(*a*) It may be possible to establish a connection between some physical evidence associated with the crime and some personal characteristic of the accused (such as, blood group, finger-prints, etc.).

(*b*) It may be possible to show a connection between the scene of crime and some other definite factor linked with the accused such as, the fibres of a textile which had been put on by the accused, or the peculiar nature of the physical marks on the garment found at the scene of crime and its connection with the vocation of the accused. Work done in the course of a vocation may be of a particular nature which leads to the coming into existence of some peculiar marks on the garments.

Physical evidence and personal characteristics.

3.8. Of course, physical evidence[2] is of infinite variety; it may include blood, hair, ammunition and firearms, soil, the human voice and finger-prints.

Personal characteristics used for the identification of criminals are—roughly in order of precision—the following[3] :

(1) blood group :

(2) colour of the hair :

(3) voice :

(4) general appearances:

(5) shape and size and arrangement of the teeth and bones : and

(6) fingerprints.

II. *Demonstrative Evidence*

Real or demonstrative evidence.

3·9. Such evidence falls in the category of real or demonstrative evidence. Real or demonstrative[4] evidence is the "things" that are introduced as exhibits and explained by testimony. In such circumstances oral testimony is secondary to the exhibit or object. Demonstrative evidence is often the most important evidence in a criminal trial. The human body, pictures, maps, charts, drawings, models, and samples of handwriting, are all examples of demonstrative evidence, which must also meet the tests of admissibility and relevancy. Important examples of demonstrative evidence might be—finger-prints of an accused on the stolen property or on doorways, or on furniture at the scene of the crime. Measurements have also a part to play.

One knowledgeable writer[5] has mentioned the following measures of identification in detail :

(*a*) Finger-prints, foot-prints and footwear prints:

(*b*) Ear :

(*c*) Bones and teeth;

(*d*) Skull;

(*e*) Fluids and hair (External);

(*f*) Fluids (Internal);

(*g*) Fibres;

(*h*) Handwriting;

(*i*) Voiceprint (spectrograph).

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[1]H. J. Watts, Forensic Medicine (1968), page 9.

[2]Para 2·3, *supra*.

[3]H. J. Watts 4 Forensic Medicine (1968), page 106.

[4]For the phrase "demonstrative", see D. J. George, Constitutional limitations on evidence in criminal cases (1969) pages 195—205.

[5]H. L. Bami, "Personal identification—Recent trends and techniques" (*July 1970*), *Indian Police Journal* pages 16—22.

III. *Objects of identification*

3.10. We shall now deal briefly with the objects of identification. The taking of measurements and photographs for the purposes of identification and the procuring of other evidence for that purpose might have a number of objects to be achieved. The objects of identification.

(*a*) In the first place, if finger-prints or other identifying materials in regard to a particular person have been taken or collected, identification becomes easy when there is a suspected repetition of the offence or of a similar offence by the same person, since it is then possible to check whether the person as to whom the record of identification material has been kept is the person who has now repeated the offence.

Section 3 of the Act would be particularly useful for these purposes, dealing as it does with the taking of measurements etc. of convicted persons or persons who have been ordered to give security for good behaviour. Here, the section looks to the future.

Measurements so taken may also be useful in cases where there is a suspicion (at the time of taking measurements or other evidence for identification) that the person made to undergo this procedure has had a previous conviction.[1] Here, the section looks to the past.

(*b*) Secondly, identification may be necessary for the purpose of an investigation into an alleged offence in order to establish the *identity* of the person arrested with the actual culprit, on the basis of the demonstrative evidence. Ultimately, the material so collected would be tendered as evidence, mainly under section 9 of the Evidence Act. Sections 4 and 5 of the Act of 1920 are primarily concerned with this aspect. Section 7 is also, to some extent, concerned with such identification.

(*c*) Thirdly, identification may be useful to establish a previous conviction—i.e. identity of the arrested person with a person previously convicted. Section 3 would be useful in this context[2]. Such previous conviction may itself be admissible in evidence either for imposing higher punishment or (in some cases) as a relevant fact or fact in issues.

(*d*) Finally, identification may be useful for statistical purposes,—for example, measurements of convicted persons may be collected and analysed in order to confirm or reject any theories of anthropoligical interest that may be put forth in regard to criminals. The Act of 1920 does not directly concern itself with this aspect. But measurements and other material taken under the Act can be used for such purpose also, if necessary.

IV. *Scheme of the Act*

Scheme of the Act.

3.11. Let us now see how the Act seeks to achieve these objectives. The scheme of the Act briefly is this. The first two sections deal with preliminary matters (short little, extent of the Act and definitions). Various species of demonstrative evidence that can be procured form the subject matter of three operative provisions—sections 3, 4, and 5—which confer on the specified authorities power to take such evidence.

3.12. Here the Act employs a dichotomy. It makes a distinction between (*i*) situations where the power to take such evidence is given to a police officer (of the prescribed rank), and (*ii*) situations where an order of the Magistrate is considered a pre-requisite before taking such evidence. The distinction so made is obviously based on the solicitude of the law for the freedom of the individual even while he is under arrest. Dichotomy.

3.13 The operative provisions of the Act are : Provisions analyse.

Section 3—Taking of measurements etc. of convicted persons.

Section 4—Taking of measurements etc. of non-convicted persons arrested for an offence punishable with rigorous imprisonment for one year or upwards.

Section 5—Power of Magistrate to order a person to be measured or photographed.

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[1] See para 3·10 (c), *infra*.

[2] See para 3·10 (a), *supra*.

The following sections deal with incidental or consequential matters :—

Section 6.	Resistance to the taking of measurements, etc.
Section 7.	Destruction of photographs and records of measurements etc. on acquittal.
Section 8.	Power to make rules.
Section 9.	Bar of suits.

Principle underlying the Act.

3.14. It may be observed that the Act proceeds upon the principle that the less serious the offence, the more restricted should be the power to make coercive measures. Correspondingly, the more serious the offence, the wider the power to take coercive measures conferred by the Act. Thus, section 3 (which is mainly confined to offences of a serious nature) confers the specified powers on police officer. But, in contrast, section 5 (which has a much wider scope) requires magisterial orders before coercive measures can be taken thereunder. Section 5 is applicable to action to be taken for the purposes of "any investigation or proceeding under the Code of Criminal Procedure....." (provided the person has been previously arrested) and is thus much wider than section 3.

V. *Scope*

Act not exhaustive other techniques of identification.

3.15. The Act of 1920 does not, of course, exhaust all the conceivable species of evidence that might be collected to facilitate identification. In addition to the matters included in the Act, a great variety of techniques for the study of the traces of crime has been developed. The techniques of physics and chemistry have, in recent times, been extensively applied to the detection of crime. It would be difficult to enumerate all of them exhaustively. It is also unnecessary to do so, since we do not propose to insert in the Act any omnious provision or an all-embracing section on the subject. As we have already stated[1], in formulating such proposals the law must try to strike a proper balance between social needs and individual privacy An all-embracing and pervasive provision might unintentionally have the effect of authorising many practices, which may not be desirable.

Voice prints furnish one example of physical evidence not dealt with by the Act.

3.16. Often, it becomes desirable to have an accused person speak for the purposes of giving to the police an opportunity to hear his voice and try to identify it as that of the criminal offender. A comparison may even be desired between the voice of an accused person and the recorded voice of a criminal which has been obtained by, say, telephone tapping. To facilitate proof of the crime the police may like that the accused should be compelled to speak,—and even that his voice as recorded may be converted into a 'voice print.'[2-3]

Words so compelled to be spoken for the purposes of comparison may not amount to testimonial compulsion with the scope of the constitutional privilege against self-incrimination as now understood, so long as the matter which the accused is compelled to speak does not relate to the crime.[4] They represent really evidence of a physical nature. The accused, by speaking such words, is giving merely "identification data", and is not subjected to any "testimonial compulsion."

However, if the accused refuses to furnish such voice, there is no legal sanction for compelling him to do so, and the use of force for that purpose would be illegal.

Categories of identification material not closed.

3.17. Obviously, the categories of data to be collected for purposes of indentification cannot be closed. At a given point of time they may be enumerated with reference to the species of evidence generally found to be useful at that particular time. But advancing scientific knowledge must go on adding to the list. In fact, there could be no end to the species of demonstrative evidence that can come into existence and prove to be useful in the investigation of crime. Even shoe-prints have been regarded as useful in identification.[5]

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1. See para 1·7, *supra*.

2. *Cf. R.* v. *Keating*, (1909) 2 Cr. Appeal Reports 61.

3 See Thomas McDade, "The Voice-Print" (July 1970) Indian Police Journal, pages 26—34.

4 Compare Inbau, Self-inorimination (1950), page 51, referred to by Moreland, Criminal Procedure (1959), pages 78-79.

5 H.S. Longia, "Shoe-print Identification" Vol. 18, Indian Police Journal, pages 14 to 19.

3.18. This somewhat elaborate discussion of the significance of the Act and of the various aspects of identification would show how important a place the Act occupies, not only in the realm of evidence but also in the realm of criminal procedure and—what is often not adequaetly appreciated—in the realm of criminal statistics and penology. Manifold aspects of the Act.

IV. *Analogous provisions.*

3.19. The Act of 1920 is not the only statutory authority for the taking of signature in legal proceedings. There is an analogous provision in section 73 of the Indian Evidence Act, 1872. That section empowers the Court to take specimen signature or finger-prints from a person present in Court. Analogous provisions in the Evidence Act.

3.20. Section 73 was considered at length by the Law Commission in its Report on the Evidence Act.[1-2] The Commission discussed in detail the conflict of decisions on the question wheather section 73 could be invoked at the stage of Investigation. The Commission noted that the Evidence Act applies only to 'judicial proceedings' and observed that it would be inconsistent with the general scheme of the Act to provide in a section of the Act for a power exercisable at an earlier stage, and recommended that it should be made clear that the power under section 73 operates only after the Court has taken cognisance of a matter. Earlier recommendation as to section 73, Evidence Act.

The Commission recommended the following re-draft of section 73 :—

"73. (1) In order to ascertain whether a signature, writing, or seal is that of the person by whom it is *alleged* to have been written or made, any signature, writing or seal admitted or proved "to the satisfaction of the Court to have been written or made by that person may be compared *by or under the orders of the Court* with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling comparison of the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions, *palm impressions, foot-prints and typewriting.*

Explanation.—Nothing in this section applies to a criminal court before it has taken cognizance of an offence."

3.21. Besides the Evidence Act, the Foreigners Act[3] gives power to the Central Government to make rules, *inter alia*, requiring a foreigner to allow his photograph and finger impressions to be taken and to furnish specimens of handwriting and signature to the prescribed authority at the prescribed time and place. Foreigners Act.

3.22. After this brief survey of the scheme of the Act and of analogous provisions and recommendations made in the past, we proceed to examine the Act of 1920 section by Section. Section by section examination.

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1. Law Commission of India, 69th Report (Indian Evidence Act, 1872) (May 1977), pages 445 to453, chapter 33
2. Law Commission of India, 69th Report (Indian Evidence Act, 1872) (May 1977), pages 452.53, para 33.40
3. Section 3(2) (iv) and 11(2) , Foreigners Act, 1946.

CHAPTER 4

PRELIMINARY MATTERS : SECTIONS 1 AND 2

Section 1 (1)-Comment regarding the short title of the Act.

4.1. With reference to section 1(1) which relates to the short title of the Act, we would like to point out that the present short title is not quite appropriate, for two reasons.

First, the use of the word "prisoners" is somewhat misleading. That word, to the ordinary layman, carries the sense of a convicted person. The Act, however, is applicable not only to persons convicted, but also to a person who has been arrested for the specified offence or for the specified cause.

Secondly, the word "identification" used in the title is also not very expressive. It seems to lay emphasis on the *process of identification* and creates an impression that the Act is concerned with what have come to be known as "identification parades." However, the scope of the Act is quite different from that of " identification parades." It is concerned more with certain measures to be taken and evidence to be collected that would facilitate identification *at a later stage* than with the process of identification.

In view of this, we are of the oninion that there is room for improvement in the short title. It is difficult to think of a title which would be short and at the same time expressive; but we suggest that the Act can be more appropriately titled as "Criminal Procedure (Physiological Evidence) Act" or as "Criminal Investigation (Physiological Evidence) Act."

Section 1(2) of the Act of 1920.

4.2. Section 1(2) provides that the Act extends to the whole of India except the territories which immediately before the 1st November, 1956, were comprised in Part B States. Thus, some areas of India are still left out of the scope of the Act. In 1951, a number of Central Acts were by a specific Central legislation[1] extended to areas then comprised in Part B States, but the Act under consideration was not so extended. We have devoted some thought to the matter and have come to the conclusion that the Act should be so extended to those areas.

True position as to competence.

4.3. Legislative competence of Parliament as to the subject matter of the Act cannot in our opinion, be doubted as it falls within "criminal procedure." [2]Section 3 of the Act (which deals with obtaining the measurement of convicted persons) is, no doubt, concerned with persons in prison and could arguably be related to the legislative entry—'prison and prisoners.' But [3]pretty large portions of the Act—particularly, sections 4 and 5 (and so much of sections 6 to 9 as provides for matters connected with sections 4 and 5), are really relatable to 'criminal law' and 'criminal procedure,'—matters which fall in the Concurrent List. [4]If the investigation of an offence can be regarded as a part of 'criminal procedure,' then certainly these sections of the Act should also be regarded as forming part there of.

Section 3 as falling within "Criminal procedure".

4.4. Even as to section 3, which we have already mentioned above[5], its subject-matter seems to fall within the topic of "criminal procedure." Fingerprints of various persons mentioned in the section are principally taken to ensure their identification in case of suspected repetition of crime or, in some cases, to check if they have already committed a crime. Essentially speaking, then, the section deals with a matter incidental to the enforcement of the criminal law by appropriate process and belongs to the field of criminal procedure.

Scope of "criminal procedure".

4.5. It is true that these matters (i.e. the taking of fingerprints etc.) were not "included in the Code of Criminal Procedure" at the commencement of the Constitution, so that the inclusive portion of the relevant constitutional entry relating to "criminal procedure" may not literally apply to them. But that does not necessarily imply that they do not belong to the domain of"criminal procedure". The ambit of that concept is fairly wide, if properly understood. Though the taking of measuiements etc. is not specifically mentioned in the Code of Criminal Procedure, it cannot be denied that it is part of the investigative process, its object being to arrive at a certain tentative conclusion on the basis of material so collected.

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1. (a) Part B States (Laws) Act, 1951. (Relevant file is not easily available).
   (b) Acts extending the Procedural Codes.
2. Concurrent List.
3. State List, Entry 4.
4. Concurrent List, Entries 1-2.
5. para 4, 3, *supra*.

4.6. We may, as regards the scope of the expression "criminal procedure", mention that many books on criminal procedure deal with the subject of investigation also. One notable example is that of the leading American book on the subject[1]. Academic practice—Criminal procedure an extensive concept.

As has been observed by another writer[2] on the American Legal System, while describing police investigation,—

> "Criminal procedure is an extensive concept. It describes the entire field of criminal prosecution, beginning with the police investigation and, thus, is not limited to the actual prosecution which begins with the indictment".

4.7. The matter could be approached from another angle. From the analysis of the various aspects of identification made earlier in this Report, it[3] would be evident that the principal purpose of identification is the achievement of certain objects essentially connected with criminal justice. So viewed, the entirety of the subject matter of the Act of 1920 can be legitimately regarded as falling within the subject of "criminal procedure". Objects connected with criminal justice.

4.8. If the view taken by us[4] about legislative competence is correct in law, then there should be no difficulty in extending the Act of 1920 to the whole of India except the State of Jammu and Kashmir. Once this is done, the way is clear for considering improvements in various sections of the Act. The changes to be proposed need not therefore be confined to the provisions of section 5. Section 1(2) to be amended.

In the light of the above discussion, we recommend that the Act should be extended to the whole of India except the State of Jammu and Kashmir. The amending Act will, of course, take care to repeal corresponding laws in force in areas formerly comprised in Part B States and make such transitional provisions as may be necessary.

4.9. This takes us to section 2 which contains three definitions. Section 2—Definitions.

Clause (a) provides that 'measurements' includes finger impressions and foot-print impressions.

Clause (b) provides that 'police officer' means an officer in charge of a police-station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898, or any other police officer not below the rank of sub-inspector.

According to clause (c), 'prescribed' means prescribed by rules made under this Act.

4.10. We have comments to offer only on clauses (a) and (b) of section 2. In clause (a), which defines 'measurements', *palm impressions* should be added. Their utility is well established, in regard[5] to the investigation of offences. Changes recommended in section 2 (*a*) and Section 2 (*b*).

In clause (b), a reference to the Code of 1973 (and its relevant chapter) should be substituted, in place of the reference to the Code of 1898.

We recommend that section 2(a) and 2(b) should be amended accordingly.

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1. Orfield, Criminal Procedure from arrest to appeal.
2. Peter Hay, Introduction to United States Law (1976), page 193.
3. Para 3·10, *supra*.
4. Para 4·7, *supra*.
5. *Cf.* English law (Appendix 1).

CHAPTER 5

TAKING OF MEASUREMENTS, FINGER-PRINTS AND PHOTOGRAPHS : SECTIONS 3 TO 5

I. *Statutory authority for use of force*

Importance of statutory authority.

5.1. We propose to consider in this Chapter sections 3 to 5, which constitute the statutory authority for taking certain measures for collecting evidentiary material from arrested or convicted persons and others. The use of force as a sanction for such measures, dealt with in section 6, will be considered in a later chapter.

Use of force illegal without authority.

5.2. It is well established that in the absence of a specific statutory provision empowering a specified authority to take finger-prints or measurements or to compel a person to furnish specimen signature, the use of force for any of these purposes would *prima facie* amount to civil wrong.[1] If there is actual or threatened physical interference with the body by compulsion,[2] the common law action in tort; (for assault or battery) would be available. Where such compulsion is "non-testimonial", questions of a constitutional nature with reference to Article 20(3) may not arise, but the general law of tort would still have to be complied with.

Section 49, Cr. P.C 1973.

5.3. Moreover, it is against the spirit of the Code of Criminal Procedure to read any mplied power to direct a person to give a specimen of his signature under pain of penalty or to furnish other physical evidence.

In this context, section 49 of the Code of Criminal Procedure quoted below is relevant—

> "49. *The person arrested shall not be subjected to more restraint than is necessary to prevent his escape*".

Thus, even if the testimony sought to be proeured thereby is not of a "communicative" nature, the use of coercive measures would be illegal unless specific statutory authority exists. This shows the significance of sections 3-5, which confer such authority in regard to measurements as well as photographs.

Taking of Photographs.

5.4. As to photographs, the taking of photographs without the consent of the person to be photographed is no doubt not illegal, according to the position as generally understood in India. But the *use of force* to compel a person to stand up for being photographed would need statutory authority, and this is precisely what saction 6 provides.

II. *The proper approach-balance between law enforcement and liberty.*

Importance of sections 3-5.

5.5. Such coercive measures—*i.e.*, the use of force for procuring identificatory evidence-derive their authority from sections 3, 4 and 5 read with section 6. Sections 3, 4 and 5 confer power on the police, or in certain cases, on the magistrates, to direct the persons concerned to furnish demonstrative evidence of the specified types. Section 6 authorises the use of force for the purpose. These provisions constitute the most important part of the Act.

Improvements appear to be needed in these operative provisions, in certain respects. For example, the species of evidence that may be directed to be furnished by an arrested person or by a convict may have to be added to, in view of various scientific developments. The range of offences in connection with which (after arrest) such evidence can be required to be furnished may also need to be expanded, in the interest of detection and prevention of crime. Further, even where, though no 'offence' in the strict sense is charged, yet proceedings for good behaviour (or analogous proceedings) have been instituted under the law, some expansion of the scope of the relevant provisions may be called for.

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1. Law Commission of India, 37th Report (Code of Criminal Procedure)(sections 1 to 176), Appendix 6, pages 203 to 208.

2. Law Commission of India, *69th Report (Evidence Act)*, Chapter 33.

3. Section 49, Code of Criminal Procedure, 1973.

5.6. At the same time, while expanding the scope of these provisions, the need to protect freedom of the individual ought not to be lost sight of. The subject is a sensitive area of human rights-bodily integrity and interference therewith under the aegis of the law[1]. This is an aspect of fundamental importance. We hope that while formulating our recommendations, we have not lost sight of this important aspect. **Aspect of human rights.**

III. Taking of specimen signature and possible legislative devices for making an amendment

5.7. Before dealing with the content of the operative provision, we would like to address ourselves to a consideration of the legislative device best fitted to implement the suggestion made by the Supreme Court in the judgement[2] to which we have already made a reference[3]. Holding that section 73 of the Evidence Act cannot be invoked for requiring a person to furnish a specimen of his *handwriting at the stage of investigation*, the Supreme Court added that "suitable legislation" (on the analogy of section 5 of the Identification of Prisoners Act, 1920) should be enacted, investing Magistrates with powers to require a person to furnish specimen writing or signature during investigation. **Legislative device considered.**

There can hardly be any doubt about the need to amend the law on the point suggested by the Supreme Court. The question that requires to be considered is about the legislative device to be adopted for achieving the objects in question. The object of investing Magistrates with the power in question could be achieved by adopting one of several alternatives :

(*i*) amending[4] the Code of Criminal Procedure, 1973;

(*ii*) amending[5] the Identification of Prisoners Act, 1920;

(*iii*) framing[6] a separate law for the purpose.

Amendment of section 73 of the Evidence Act would, of course, be out of question, as the Act is not concerned with the stage of investigation.

The Supreme Court did not, of course, make any observations implying that the amendment or addition to be made for this purpose should be made to the Act of 1920, or, for that matter, to *any particular enactment*. The words "suitable legislation" (in the judgement)[7] leave the matter elastic. In this connection, we have, as stated above,-considered several possible alternatives. Our examination of the present statutory framework has satisfied us that most convenient course would be to make the necessary amendment in the Act of 1920. The position with reference to the merits of each alternative, briefly discussed below, would seem to support our conclusion.

5.8. The first alternative[8] would be to amend the Code of Criminal Procedure, 1973 by inserting suitable provisions either in the Chapter of that Code relating to investigation (say, as section 165A, 165B and so on) or in the Chapter dealing with search. In that case, however, a number of further provisions—provisions by way of penalties, definitions and rules—would have to be inserted to deal with several incidental matters, and these might spoil the compactness of Chapter 14 of the Code, if not the symmetry of the entire Code. **Amendment of the Code not preferred.**

Moreover, for the detailed implementation of the power proposed to be added, some matters would have necessarily to be left to rules—a course which does not fit in with the general pattern and style of the Code. An amendment of the Code woud therefore suffer from certain serious drawbacks.

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1. See also para 1·7, *supra*.

2. *State of U. P.* v. *Ram Babu Misra*, (1980) Vol. 2, Part 3, S.C.C. 343, 346 (May 1, 1980).

3. Para 1·1, *supra*.

4. Para 5·8, *infra*.

5. Para 5·9, *infra*.

6. Para 5·10, *infra*.

7. Paragraphs 1·1 and 5·5, *supra*.

8. Para 5·7, *supra*.

81-M/J(N)56MofLJ&CA—3

Second alternative preferable.

5.9. In comparison, the second alternative[1] mentioned by us—amending the Act of 1920—appears to be a smoother one. The Act is a more appropriate place for inserting the requisite provisions (both substantive and consequential). The substantive additions—power to require a person to sign—can be made without much violence to its present structure. Moreover, amendment of that Act would involve adding the least amount of statutory matter. The Act already contains detailed provisions dealing with matters incidental to, or consequential on, a direction to furnish the specified types of demonstrative evidence.

Any new power to be conferred could be dealt with suitably by an amendment of the relevant operative provision; and provisions incidental to the exercise of the new power could also be conveniently accommodated in the existing incidental provisions of the Act.

In fact, by making minor amendments to sections 6 to 8 of the Act, incidental matters could be adequately provided for and this process would involve addition of the minimum amount of statutory matter. It is therefore preferable to amend the Act of 1920.

Question of separate legislation.

5.10. We also considered the third[2] alternative, namely, enactment of separate legislation to deal with the matter. However, if this device is adopted, the advantages to be gained by amending the Act of 1920, to which we have already made a reference above[3], would be lost. The separate law to be newly enacted would have to provide for several incidental matters, thus leading to duplication. We would, therefore, adhere to our preference for amending the Act of 1920 as the most convenient device for dealing with the point raised[4] in the judgement of the Supreme Court.

A separate Act would have to provide for a number of matters of detail. The provisons to be inserted would, having regard to the methods of legislative drafting in India and its traditions, have to follow closely the wording of the Act of 1920. Such a course should, if possible, be avoided, since it would needlessly encumber the statute book and duplicate certain propositions.

Thus, even for the limited purpose of effecting a reform on that point, amendment of the Act of 1920 is the most convenient course. In fact, the point is analogous to section 5.

Act of 1920 to be amended.

5.11. *Prima facie*, then, we are inclined to adopt the alternative of incorporating the necessary amendments tin the Act of 1920. We do not think that such a course is likely to raise any serious legal or practical problems.

IV. *Powers of the police : sections* 3 *and* 4

Section 3 Changes recommended.

5.12. With these general observations as to the operative provisions, we proceed to consider their specific content and text.

Section 3 State Amendment.

5.13. Section 3 requires every person who has been convicted of certain specified offences or who has been ordered to furnish security for good behaviour under the Code of Criminal Procedure to allow his measurements and photographs to be taken by the police officer in the prescribed manner, if so required. Offences mentioned in this behalf are—offences punishable with rigorous imprisonment for a term of one year or upwards and also offences which would render the person convicted liable to *enhanced punishment on a subsequent conviction.*

As a result of practical difficulties experienced in the working of the section—presumably because of its limited scope—extensive amendments have been made by several States in the, section. We have taken ourselves through those amendments and, as a result of our study have come to the conclusion that the scope of the section needs to be expanded in certain directions. For example, while the test of punishment of rigorous imprisonment of one year or upwards laid down in section 3 is satisfactory so far as it goes, certain other offences should also be included, having regard to their nature and to the consideration that, in practice, they are likely to be persistently repeated, because of the prospect of gain. For this reason, we recommend that the offence under section 19 the Dangerous Drugs Act, 1930 should be included in section 3 of the Act of 1920. Section 19 punishes a person who, without licence, engages in, or controls, any trade whereby a dangerous drug is obtained outside India and supplied outside India. The offence is likely to be repeated in view of substantial profits likely to accrue from its commission.

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1. Para 5·7, *supra.*
2. Para 5·7, *supra.*
3. Para 5·9, *supra.*
4. Para 5·7, *supra.*

5.14. Apart from the case of conviction under section 19 of the Dangerous Drugs Act[1], a person in respect of whom orders under section 18 of that Act have been passed should also, in our opinion, be included in section 3. Section 18(1) of that Act reads as under:— Section 18, Dangerous Drugs Act.

> "18. *Security for abstaining from commission of certain offences*—(1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13 or section 14 and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without "sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix."

In our opinion, such persons may, for purposes of the matter under discussion, be regarded as standing on the same footing as persons to whom section 3 already applies. The epithet "dangerous" in the short title of the Act is significant.

5.15. While the amendments recommended above would expand the scope of section[3], a few other minor changes are also required in the section. In clause (*b*), in place of the present reference to the Code of Criminal Procedure, 1898, reference to the provision n in the Code of 1973 should be substituted. Further, in the last line, after the words "if so required", the words "by a police officer" should be added, for the sake of precision[2]. Other minor changes in section 3.

5.16. In the light of the above discussion, we recommend that section 3 should be revised as under :— Suggested redraft of section 3.

Revised section 3

"3. Every person who has been—

(*a*) convicted of any offence punishable with rigorous imprisonment for a term of one "year or upwards, or

(*b*) *convicted of any offence punishable under section* 19 *of the Dangerous Drugs Act,* 1930, *or*

(*c*) *convicted of any offence which would render him liable to enhanced punishment on a subsequent conviction or*

(*d*) *ordered to give security for his good behaviour under section* 117 *of the Code of Criminal, Procedure,* 1973 *or under any other law for the time being in force, or*

(*e*) *ordered to give security for abstaining from the commission of certain offences*[3] *under section* 18 *of the Dangerous Drugs Act,* 1930.

shall, if so required *by a police officer* allow his measurements and photographs to be taken by a police officer in the prescribed manner."

5.17. Section 4 provides for the taking of measurements of any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, if so required by a police officer. State amendments to this section have expanded its scope in several directions. Section 4—State Amendments.

In the first place, power has been given to take also a photograph of the persons concerned.

In the second place, persons who have been arrested under section 19 of the Dangerous Drugs Act[4] or section 7 of the Drugs and Magic Remedies (Objectionable Advertisements), Act, 1954 or section 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 have been covered[5].

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1. Para 5·13, *supra.*
2. Compare section 4.
3. Under section 18, Dangerous Drugs Act, security for abstaining from the commission of certain offences can be required.
4. Para 5·13, *supra.*
5. Compare Maharashtra Act 35 of 1970.

In the third place, persons arrested under sections 54, 55 or 151 of the Code of Criminal Procedure, 1898 (now the Code of 1973—sections 41 and 151), have been covered.[1]

In the fourth place, persons in respect of whom a direction or order under section 5 of the Passport (Entry into India) Act, 1920 has been made, have been covered. That section authorises the Central Government to order the removal from India of a person who has entered without passport.

In the fifth place, persons to whom pardon has been tendered under certain provisions of the Code of Criminal Procedure have been covered. Finally, persons arrested in connection with offences under certain local laws relating to police, beggers and habitual effenders have been covered.[2]

Need to improve the section.

5.18. We are of the opinion that many of these amendments, in view of their importance to the detection and prevention of crime and the maintenance of records of suspected criminals and otherwise with reference to *achieve* satisfactorily the various objects of identification, deserve to be adopted for the whole of India. While some of them are of local interest, a few others have an all-India importance. At the same time, we are not inclined to make the scope of the section very wide.

As regards persons arrested by the police under section 41, it is enough to include section 41(2) of the Code of quoted below :—

> "41(2). Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110."

Section 151(1) of the Code may be expressly covered. It reads—

> "151. (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, *if it appears to such officer that the commission of the offence cannot be otherwise prevented.*"

Section 19 of the Dangerous Drugs Act, 1930 has already been referred to. It punishes a person who "engages in or controls any trade whereby a dangerous drug is obtained outside India and supplied to any person outside India, otherwise than in accordance with conditions of the licence granted under the Act."

Section 7 of the Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954 punishes a person who "contravenes any of the provisions of the Act or the rules made thereunder".

Section 8 of the Suppression of Immoral Traffic in Women & Girls Act, 1956 punishes the act of abducting or soliciting for the purposes of prostitution.

Section 4 of the Passport (Entry into India) Act, 1920 provides for the arrest of "any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3."

Section 5 of the Passport (Entry into India) Act, 1920 provides for the issue of a direction or order for the "removal of any person from India who, in contravention of any rule made under section 3 prohibiting entry into India without passport, has entered therein....".

Section 306 of the Code of Criminal Procedure, 1973 provides for the tender of pardon to any person supposed to have been directly or indirectly conerned in, or privy to, an offence to which the section applies. Pardon is tendered to such person on condition of his making a full and true disclosure.

Section 307 of the same Code provides for the tender of pardon to any person supposed to have been directly or indirectly concerned in, or privy to, certain offences.

These are all offences which represent serious anti-social conduct likely to be indulged in frequently because of profits. Identification material—such as fingerprints and photographs—would be particularly useful in such cases.

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1. Compare Maharashtra and Gujarat Amendment.
2. Maharashtra Act 35 of 1970, amendment of section 4 and new section 4A inserted by Bombay Act 58 of 1953.
3. Para 5·13, *supra*.

5.19. Bearing the above considerations in mind, we recommend that section 4 should be revised as under :— **Recommendation to revise section 4.**

Revised section 4

"4. Any person—

(*a*) who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, or

(*b*) *who has been arrested under sub-section* (2) *of section* 41 *of the Code of Criminal, Procedure*, 1973, *or*

(*c*) *who has been arrested under section* 151 *of the Code of Criminal Procedure*, 1973, *or*

(*d*) *who has been arrested in connection with an offence punishable under—*

(*i*) *section* 19 *of the Dangerous Drugs Act*, 1930, *or*

(*ii*) *section* 7 *of the Drugs and Magic Remedies* (*Objectionable Advertisements*) *Act*, 1954, *or*

(*iii*) *section* 8 *of the Suppression of Immoral, Traffic in Women and Girls Act*, 1956, *or*

(*e*) *who has been arrested under section* 4 *of the Passport* (*Entry into India*) *Act*, 1920, *or*

(*f*) *in respect of whom a direction or order under section* 5 *of the Passport* (*Entry into India*) *Act*, 1920 *has been made*, *or*

(*g*) *to whom a pardon has been tendered under section* 306 *or* 307 *of the Code of Criminal Procedure*, 1973.

shall, if so required by a police officer, allow his measurements *or photograph to be taken by a police officer* in the prescribed manner."

V. *Magisterial orders—section* 5*—the present position as to signature.*

5.20. This takes us to section 5. That section empowers a magistrate to *order* a person to allow his measurements or photograph to be taken, where the magistrate is satisfied that for the purpose of any 'investigation or proceeding under the Code of Criminal Procedure, 1898' (this was the Code then in force), it is expedient to make such a direction. It is then obligatory for the person directed to attend at the time and place specified in the order and to allow his measurements or photograph to be taken by the police officer. There are certain safeguards in this behalf, provided by the two provisos to the section. **Section 5.**

5.21. It is to be noticed that section 5, as it stands at present, does not permit an order to be passed directing a person to furnish a specimen signature or handwriting. The reasons for this narrow scope of the section are partly historical. The Act of 1920 was drafted to meet an immediate need. The difficulty that had been actually experienced roundabout 1915 related only to photographs *and fingerprints*. There had been no difficulty reported as to taking a specimen signature. **Position as to taking of specimen signature.**

5.22. Even as regards photographs and fingerprints, no difficulty seems to have been felt before 1915. But, in 1915, the Government of Bengal drew attention to the case of two dangerous conspirators convicted in the Raja Bazar bomb case who were most persistent in their refusal to be photographed. That Government further reported that instances were becoming frequent in which prisoners refused to allow their fingerprints or photographs to be taken. It was in this background that the Government of Bengal suggested certain amendments in the Police Act and the Prisoners Act with a view to enabling the police officers and jail superintendents to take fingerprints, measurements, etc. of persons under arrest, undertrial prisoners and convicts[1]. **Position before and after 1915.**

1. National Archives, papers relating to Act 33 of 1920, despatch to the Secretary of State for India from the Home Department No. 8 of 1918 dated 18th September, 1918.

The Government of India, after an examination of the whole question, came to the conclusion that—

"No further time should be lost in placing on a regular footing a practice which is the normal incident of police practice in India."

Since no difficulty had been felt as regards the taking of signature as such, no provision on that point was contemplated in 1920.

Legal questions not raised so far.

5.23. In fact, even after 1920, the legality of coercive measures to secure identificatory evidence in general does not seem to have been directly in issue before the courts. After the commencement of the Constitution, some constitutional questions with reference to the compulsory taking of evidence have, no doubt, been debated in courts. But the position under the general law of torts has not been discussed at length in India. Even in the leading case relating to self-incrimination under article 20(3) of the Constitution, where one of the set of documents in issue related to certain specimen signatures taken from the accused in the erstwhile State of Bombay, the legality of the practice as such was not challenged.

The position in this respect, however, has now changed. The observations made by the Supreme Court, already referred[2] to, render a detailed examination of this aspect desirable.

Position in England as to signature.

5.24. It would be of interest to note that in England no power has been taken to use force to compel the taking of signature, though the taking of fingerprints has been provided for by statutory regulations. We are setting out in an Appendix the English law in some detail.

Suggestion of Supreme Court.

5.25. In India, the deficiency in section 5, resulting from the absence of a provision as to the taking of signature became crucial in the case before the Supreme Court.[4] The Supreme Court, after holding that section 73 of the Indian Evidence Act did not apply at the stage of investigation, made the following pertinent observations :—

"We accordingly dismiss the appeal and while doing so, we would suggest that suitable *legislation*[5] may be made on the analogy of section 5 of the Identification of Prisoners Act, to provide for the investiture of magistrates with the power to issue directions to any person, including an accused person to give specimen signatures and writings."

Since a difficulty has already arisen as to specimen signature, a suitable amendment of the law is necessary on the point. We shall, towards the close of this Chapter,[6] suggest a suitable re-draft of section 5.

VI. *Recording of voice*

Identification of voice—present position.

5.26. The scope of section 5 needs to be expanded in another respect. The general power of investigation given to the police under the Criminal Procedure Code may not imply the power to require the accused to furnish a specimen of his voice. Cases in which the voice of the accused was obtained for comparison with the voice of the criminal offender are known but the question whether the accused can be *compelled* to do so does not seem to have been debated so far in India.

There is no specific statutory provision in India which expressly gives power to a police officer or a court to require an accused person to furnish a specimen of his voice.

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1. *Kathi Kalu*, A.I.H. 1961 S.C. 1808, 1816, para 21.
2. Chapter 1, *supra*.
3. See Appendix 1.
4. *State of U. P.* v. *Ram Babu Misra*. (1980) 2 S.C.C. 341, para 8 (1st May, 1980).
5. Emphasis added.
6. Para 5·32, *infra*.

5.27. It would appear that there is scope for the use of recording of voice in investigation. A sound recording would, for example, be very useful where accent or lisp is important.[1]

A voice print[2] is a visual recording of voice. It mainly depends on the position of "formants". These are concentrates of sound energy at a given frequency. It is stated[3] that their position in the "frequency domain" is unique to each speaker. Voice prints resemble finger prints, in that each person has a distinctive voice with characteristic features dictated by vocal cavities and articulates[4].

Voice-print identification seems to have a number of practical uses. In England, in November 1967 at the Winchester Magistrate's Court, a man was accused of making malicious telephone calls. Voice-print identification (spectrograph) was used and the accused was found guilty[5].

Identification by voice has been often resorted to elsewhere[6].

Need to extend the scope of section 5.

5.28. In view of this scientific advance, it may be useful to expand the scope of the coercive measures sanctioned by the Act, so as to cover identification by voice. Though the need for such identification may arise only occasionally, such a provision could be of great value. Of course, a provision requiring a person arrested to speak certain words or to make certain sounds cannot be enforced directly, in as much as, if the person concerned refuses to do so, it is not physically possible to compel him to speak. At the same time, indirect sanctions in the shape of a penalty (compare section 6) for refusal to do the specified act could be applied.

If the above approach is accepted, the object could be carried out by adding, in section 5, suitable words at the appropriate place[7].

VII. *Recording Iof reasons for order of the Magistrate*

Reasons for a direction under section 5.

5.29. We have so far discussed, in regard to section 5, questions of a substantive nature mainly concerned with scope of the section. It is now necessary to consider matters of a procedural character. As the section stands at present, the magistrate is not required to give reasons for the direction made by him under the section[8]. It appears to us that there are several important considerations justifying the insertion of such a requirement.

In the first place, the section applies to "any person"—though, under the proviso, it is necessary that such person should at some stage have been under arrest. Its scope is thus fairly wide. In the second place, the section authorises the giving of a direction for the purpose of "any investigation or proceeding" under the Code. This also shows the width of its coverage. In the third place, the kind of action that may be directed under the section interferes with bodily integrity and refusal is attended by criminal penalties.[9] Propriety, therefore, requires that reasons should be given for such a direction.

Apart from this one cannot overlook the emerging interpretation[10] of "procedure established by law" (article 21) that is now being developed by the Supreme Court. In view of this development, it is desirable that the section should incorporate such a safeguard as is suggested above. For all these reasons, we are including this amendment in the redraft of section 5 which we are recommending later in this Chapter[11].

VIII. *Overlapping between section* 5 *and section* 73

Overlapping between section 5, Act of 1920 and section 73, Evidence Act.

5.30. While the above amendments would expand the scope of section 5, there is one point in regard to which its scope may need to be restricted. This is necessary in order to remove a certain amount of overlapping that exists at present between section 5 of the Act

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1. Alec Samuels, "Identification Evidence" (1975)125 New L. J. 1146, 1147.
2. Bonnett Sandler, Law Enforcement and Criminal Justice (1979), page 303.
3. Bennett Sandler, Law Enforcement and Criminal Justice (1979) note below figure 9—7.
4. Bennett Sandler, Law Enforcement and Criminal Justice (1979), pages 303-304.
5. Thomas Mc Dade, "The voice-print" (1970 July), Indian Police Journal, pages 2634.
6. See Appendix.
7. See para 5·32, *infra*.
8. *J.E. Gubbary* v. *Emperor*, A.I.R. 1936 Cal. 65, 67.
9. Section 6.
10. See Appendix 3.
11. Para 5·32, *infra*.

of 1920 and section 73, Evidence Act. If one takes the case of a magistrate acting in the course of trying an offence, the overlapping becomes manifest. The magistrate may, at the trial stage, require the person concerned—usually, the accused person—to furnish a specimen of his finger impression not only under section 73, but also under section 5. Section 5 is wide enough to cover the stage of trial, as it covers every "proceeding" under the Code. There exists, thus, an overlapping between the two.

So far as section 73 is concerned, its scope will, to a certain extent, come to be better defined, after the recommendation[2] of the Law Commission on the Evidence Act is implemented. According to the clarification as recommended by the Law Commission, section 73 will apply to a court only after it has taken cognizance of an offence. To this extent the overlapping will be reduced[3].

But section 5 (unless suitably amended) will continue to apply, *inter alia*, to the stage after cognizance of an offence by a magistrate and, to that extent, overlapping will continue. It does not need much argument to point out that such overlapping jurisdiction in this matter is not only unnecessary, but also likely to create confusion. For example, section 5 is hedged in with certain safeguards, while section 73 is not. Thus, the question whether safeguards should or should not be complied with in a partiular case will depend on the statutory provision resorted to. This should be avoided.

Need for amendment excluding from section 5 cases covered by section 73, Evidence Act.

5.31. It is to be noted that section 5 covers finger impressions and (after the proposed amendment) will cover also signature[1]. Both are covered by section 73 also, in regard to the trial stage. That is how overlapping arises.

In order to remove the overlapping, it is necessary that a provision should be inserted in section 5 to ensure that it does not apply in relation to any action that the court is competent to take under section 73 of the Evidence Act[5].

IX. *Recommendation as to section* 5

Recommendation to revise section 5.

5.32. In the light of the above discussion, we recommend that section 5 should be revised as under :—

Revised section 5

"(1) If a Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973, it is expedient to direct any person—

(*a*) to allow his measurements or photograph to be taken, or

(*b*) *to furnish a specimen of his signture or writing, or*

(*c*) *to furnish a specimen of his voice by uttering the specified words or making the specified sounds.*

the Magistrate may make an order to that effect, *recording his reasons for such an order.*

(2) The person to whom the order relates—

(*a*) shall be produced or shall attend at the time and place specified in the order, and

(*b*) shall allow his measurements or photcgraph to be taken by a police officer, *or furnish the specimen signature or writting or furnish a specimen of his voice, as the case may be in conformity with the orders of the Magistrate before a police officer.*

"(3) No order directing any person to be photographed *shall be made* except by a *metropolitan Magistrate* or a Magistrate of the first class.

(4) No order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

(5) *Where a court has taken cognisance of an offence a Magistrate shall not under this section, give to the person accused of the offence any direction which could, under section 73 of the Indian Evidence Act* 1872, *be given by such Magistrate.*"

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1. (a) *Superintendent and Remembrancer of Legal Affairs* v. *Kiranbala*, A. I. R. 1928 1928 Patna 103.
   (b) **Zahri*.. Emperor, A.I.R. 1928 Patna 103.
2. Law Commission of India, 69th Report, para 33·40.
3. See para 3·20, *supra*.
4. Para 5·32, *infra*. and para 5·23, *supra*.
5. Para 5·32, *infra*.

CHAPTER 6

INCIDENTAL PROVISIONS : SECTIONS 6 TO 9

Section 6.

6.1. By now, we have disposed of the operative provisions of the Act, and we now proceed to consider its incidental provisions. Of these provisions, section 6 is the most important. It provides certain sanctions in regard to resistance to the taking of measurements or photographs. Under sub-section (1), it shall be lawful to use all means necessary to secure the taking of measurements or photographs. Under sub-section (2), resistance to, or refusal to allow the taking of, measurements or photographs is deemed to be an offence under section 186 of the Indian Penal Code (voluntarily obstructing a public servant acting in the discharge of his official duties).

Questions raised by section 6(1) "means necessary".

6.2. The provision in section 6(1) to the effect that on the resistance to the taking of measurements or photographs or on the refusal to allow the taking of the same, "it shall be lawful to use all means necessary to secure the taking thereof" raises an interesting question, namely, how far is the person using such "necessary means" allowed to go and what is the extent of force that he can employ for the purpose ?

This sub-section is modelled on the provision relating to arrest in the Code of Criminal Procedure[1]. Under that Code, if a person to be arrested resists forcibly the endeavour to arrest him or attempts to evade the arrest, the police officer or other person arresting him "may use all means necessary to effect the arrest". The Code, however, further provides that nothing in the section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.

In the context of measures for identification, no such qualification was apparently considered necessary, because it would be unthinkable that the person taking "measurements" would go to the length of causing death or even serious bodily injury.

We would leave section 6(1) undisturbed, no difficulty having arisen so far.

Changes needed in section 6(2).

6.3. In view of the amendment recommended by us in section 5 of the Act[2], section 6(2) will need certain consequential changes so as to penalise refusal to furnish specimen *signature or voice*.

Suggested re-draft of section 6.

6.4. Accordingly, we recommend that section 6 should be revised as under :—

Revised section 6

"6. *Resistance to the taking of measurements, etc.*—(1) If any person who, under this Act, is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same[3], it shall be lawful to use all means necessary to secure the taking thereof.

(2) Resistance to, or refusal to allow, the taking of measurements or photographs or *refusal to furnish a specimen signature or writing or a specimen of voice under this Act* shall be deemed to be an offence under section 186 of the Indian Penal Code."

Section 7.

6.5. Section 7 provides for the destruction of photographs and records of measurements on acquittal, except where the person concerned has been previously convicted of an offence punishable with rigorous imprisonment for a term or one year of upwards.

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1. Section 46(2) and 46(3), Code of Criminal Procedure, 1973.

2. Para 5·32, *supra*.

3. It is unnecessary to add the taking of signature in sub-section.

Section 7 to be revised.

6.6. In view of the changes recommended by us in section 5, section 7 will also need amplification so as to provide for the destruction of specimen signature or wirting or specimen of voice. Accordingly, we recommend the following re-draft of section 7 :—

Revised section 7

"7. *Destruction of photographs and records of measurements etc. on acquittal.*— Where any person,.....not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards,—

(*a*) has had his measurements taken or has been photographed or *has furnished any specimen signature or writing or a specimen of his voice in accordance with* the provisions of this Act,

(*b*) and is released without trial or discharged or acquitted by any Court,

all measurements and all photographs (both negatives and copies) so taken, and all *specimen signature and writings or specimens of voice so furnished*, shall, unless the Court or (in a case where such person is released without trial) the District Magistrate or Sub-Divisional Officer for reasons to be recorded in writing, otherwise directs, be destroyed or made over to him."

Section 8.

6.7. Section 8 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act, including, in particular, certain specified matters, which are mostly connected with action to be taken under sections 3 to 7.

Revised section 8.

6.8. This section will need consequential changes in view of the amendments recommended by us in section 5. Apart from that, opportunity may also be taken of providing that rules under the section should be made by means of notification to be published in the official gazette. Accordingly, we recommend that section 8 should be revised as under :—

Revised section 8

"8. *Power to make rules.*—(1) The State Government may, *by notification in the Official Gazette*, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

(*a*) restrictions on the taking of photographs of persons under section 5;

(*b*) the places at which measurements and photographs may be taken or *at which any person may be required to furnish "any specimen signature or writing or specimen of his voice under this Act;*

(*c*) the nature of the measurements that may be taken under this Act;

(*d*) the method in which any class or classes of measurements shall be taken *under this Act*;

(*e*) the dress to be worn by a person when being photographed under section 3; and

(*f*) the preservation, safe custody, destruction and disposal of records of measurements and photographs and of *specimen signatures and writings or specimens of voices taken under this Act.*

Section 9—No change

6.9. Section 9 contains a general provision barring suits or proceedings for anything done or intended to be done in good faith under the Act or under rules made thereunder. Following as it does, the usual pattern, it needs no special comments.

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1. *Para 5.32, supra.*

CHAPTER 7

SUMMARY OF RECOMMENDATIONS

We summarise below the recommendations made in this Report.

Chapter 4—Preliminary matters

(1) Short title of the identification of Prisoners Act, 1920 should be amended as recommended in the Report[1].

(2) Section 1(2) of the Act should be amended so as to extend the Act to the whole of India except the State of Jammu and Kashmir[2].

(3) In section 2(*a*), which defines "measurements," palm impression should also be added.[3]

(4) In section 2(*b*), in place of the present reference to the Code of Criminal Procedure, 1898, a reference to the Code of 1973 should be substituted[4].

Chapter 5—Taking of measurements, fingerprints and photographs : sections 3 to 5.

(5) In section 3, the offence under section 19 of the Dangerous Drugs Act, 1930 should be added. Further, in the same section, person in respect of whom orders under section 18 of the Dangerous Drugs Act, 1930 have been passed should also be included[5].

(6) In section 3(*b*), in place of present reference to the Code of 1898. a reference to the Code of 1973 should be substituted. Further, after the words "if so required," the words "by a police officer" should be added, for the sake of precision[6].

(7) Section 4 should be amended so as to empower a police officer (as defined in the Act to take photographs of the persons to whom the section[7] applies.

(8) Section 4 should be further amended to cover the taking of identification data from certain other persons mentioned in the Report[8], being persons arrested under various statutory provisions as specified.

(9) Section 5 should be amended to provide specifically for a power (to be exercisable by the authorities and subject to the safeguards given in the existing section) to require the persons mentioned in the section to furnish—

(*a*) specimen signature or writing[9]

(*b*) specimen of voice[10].

(10) For a direction given by the Magistrate under section 5, reasons should be given[11].

(11) Overlap between section 5 of the Act of 1920 and section 73 of the Evidence Act should be removed by excluding from the scope of section 5 a case in which a court can act under section 73.[12]

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1. Paragraph 4·1.
2. Paragraph 4·8.
3. Paragraph 4·10.
4. Paragraph 4·10.
5. Paragraphs 5·13, 5·14 and 5·16.
6. Paragraphs 5·15 and 5·16.
7. Paragraphs 5·17 to 5·19.
8. Paragraphs 5·17 to 9 19.
9. Paragraphs 5·21 to 5·25 and 5·32.
10. Paragraphs 5·26 to 5·28 and 5·32.
11. Paragraphs 5·29 and 5·32.
12. Paragraphs 5·30, 5·31 and 5·32.

Chapter 6—Incidential provisions : sections 6 to 9.

(12) In view of the amendments recommended in the other provisions of the Act, section should also be amended to make consequential changes[1].

(13) In view of the amendments recommended in section 5, section 7 should also be consequentially revised[2].

(14) In view of the amenmdnets recommended in section 5, section 8 should also be amended for carrying out consequential changes. Further, it should be provided in the section that rules under the section shall be made by means of a notification to be published in the Official Gazette[3].

P.V. Dixit.

(Sd/) .....
Chairman

S.N. Shankar

Sd/—
Member

Gangeshwar Prasad

Sd/—
Member

P.M. Bakshi

Sd/—
Member-Secretary

27th August, 1980.

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1. Paragraphs 6·3 and 6·4.
2. Paragraph 6·6.
3. Paragraph 6·8.

APPENDIX 1

ENGLISH LAW AS TO FINGERPRINTS AND MEASUREMENTS

I. *Common law*

Search of body.

There is no general common law right to search the body of a person arrested,[1] except for weapons which he carries or for evidence on his possession which is material to the offence alleged to have been committed.[2-3]

Position in England as to battery.

Although there is little English authority, it can be said with some confidence that the use of force against the body of a detained person for the purpose of obtaining evidence would (unless there is a specified rule of statutory authority sanctioning it) be actionable as a tort.

There is a common law power to search arrested persons (the police have not tried to assert that this power extends to a search of the body, as distinct from a search of the clothes or exterior)[4]. But other cases of use of force would require statutory authority.

There is no common law right in the police in England to take finger prints without the consent of the accused[5]. The consent must be free[6].

Scott L.J. regarded the taking of fingerprints without statutory authority as inconsistent with the presumption of innocence until proof of guilt and (if it followed an arrest) as an element in the false imprisonment[7].

The Scottish Justiciary Appeal Court in 1933[8]. by a majority judgment, held that forcible taking of finges-prints did not constitute a violation of the common law right of the subject in Scotland. But it would appear that the English law was different this was pointed out by Lord Hunter in his dissenting judgment in the above mentioned case.

One contemporary article[9] offered these comments on the Scottish case. "Forcible taking of fingerprints does not appear to have been the subject of reported English judiciai decisions. It would be wise, however, for those on whom the taking of such (fingerprints) devolves to acquaint themselves with the regulations on the subject and see that such (regulations) are strictly carried out."

II. *Present statutory provisions as to finger prints*

Position in Enland as to fingerprints.

The position in England as to finger prints is now governed by statutory provisions. The Magistrates may order fingerprints[10] and palm prints[11] of the accused to be taken, where he has been charged with a summary or indicatable offences, if an application is made by a Police Officer not below the rank of Inspector. This power cannot, however, be invoked where the accused is under 14 years of age.[12-13]

Use of force.

For the purpose of taking fingerprints, such reasonable force may be used as is necessasy. Finger prints may be taken at the place where the court is sitting or where the person concerned is committed to custody or remand.

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1. See also Chapter 1 of the Report.
2. *Bessell* v. *Wilson*, (1853) Law Times old series 233.
3. Halsbury, 4th Edition, Vol. 11, page 85, para 121.
4. Glanville L. Williams, The Privilege Against Self-Incrimination: An International Symposium (England) (1961), 51 J. of Cri. Law, Criminology and Police Science 166, 169.
5. *Isschinsky* v. *Chritie*, (1946) K.B. 124, 142 (Scott L.J.).
6. *Dumbell* v. *Roberts*. (1944) 1 All E.R. 326, 330 (C.A.) (Per Scott L.J.).
7. *Dumbell* v. *Roberts*. (1944) 1 All E.R. 326, 330.
8. See Law Commission of India, 69th Report.
9. Note in the Justice of Peace, reproduced in (1933) 34 Criminal Law Jounral 71, 73.
10. Section 40(1), Magistrates Courts Act, 1952.
11. Section 33, Criminal Justice Act, 1967.
12. Section 40(1), Magistrates Courts Act read with section 8, Children and Young Persons Act, 1967.
13. Moriarty, Police Law (1976), page 16.

Fingerprints can be taken only of a person "who has been taken into custody and charged with an offence before a magistrate."[1]

But such prints may also be taken from any person who appears before a Magistrate's Court in answer to a summon for any offence punishable by imprisonment by virtue of one of the the statutory provisions.[2]

If the information is dismissed, or if the examining justices do not commit the accused for trial or if he is acquitted, the finger-prints and all copies and records thereof must be destroyed.[3]

Regulations under the Prisons Act.

Apart from the provisions mentioned above, there are statutory Regulations in force in England relevant to the subject.[4] Under the Prisons Act, the Secretary of State may makeregulations for measuring and photographing of psisoners.[5] This provision applies also to remand centres, detention centres and Borstal institutions and persons detained therein. Such Regulations were made in 1896 under the corresponding earlier legislation, and are continued in force by the Prisons Act.[6-7]

Photographs.

A criminal prisoner may be photographed and measured at any time during imprisonment, either in prison dress or in any other dress suitable to his position in life. "Measurements" includes the taking of impressions of external filaments of the fingers and thumb of each hand with ink.

An untried prisoner may be photographed or measured and his finger impressions taken while in prison by order of the Secretary of State or upon a written application by a police officer of not lower rank then a Superintendent. The application must be confirmed by a magistrate or (in the metropolitan area) by the Commissioner or an Assistant Commissioner of Police. The application must set forth that, from the character of the offence with which the prisoner is charged or for other reasons, there are grounds for suspecting that the prisoner has been previously convicted or has been engaged in crime or that from any other cause[8] his photograph and measurements are required for the purposes of justice[9].

There are provisions in England for the destruction or return of the photograph and measurements on acquittal etc. where the person concerned is an untried prisoner who has not been previously convicted of crime. The provisions also enable the prisoners' fignerprints to be compared with other prints in the possession of the prosecution.

Compulsion to attend identification parade.

The U. K. Committee on identification evidence said[10] :—

"The first and most obvious case is when the accused refuses to attend the parade. We have noted that in parts of the United States there has been a move in recent years to employ a court order to compel a suspect who is not already in custody to attend an identification parade. But such has never been the practice in this country (U.K.) and none of our witnesses had advocated its introducion; apart from the *objectio. in principle to the exercises of compulsion*, everyone is agreed that a fair parade requires the accused's co-operation."

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1. Section 40(2), Magistrates Courts Act, 1952.
2. Section 33, Crimianl Justice Act, 1967.
3. Section 40(4), Magistrates Courts Act, 1952.
4. Stone's Justices' Manual (1970). Vol. 2, pages 2636-2637. Also Vol. 1, page 455.
5. Sections 16 and 43(3), Prisons Act, 1952
6. Stone's Justices' Manual (1970), Vol. 2, pages 2636-2637.
7. See Halsbury, 3rd Ed., Vol. 30, page 591, para 1131.
8. Stone's Justices' Manual (1970), Vol. 2, pages 2636-2637.
9. See also Halsbury, 3rd Ed., Vol. 30, page 596, para 1143.
10. Departmental Committee on Evidence of Identification in Criminal Cases (1976), pages 97,98.

III. *History of English law*

History.

The present law on the subject of fingerprints has developed gradually and through stages. In the case of convicted criminals, section 6(6) of the Prevention of Crimes Act, 1871 (34 and 35 vic. Chapter 112) authorised the making of regulations for the photographing of criminals. The Penal Servitude Act added measurements to photography, and extended the Regulations made under the Act of 1871 so as to cause them to apply to "all prisoners who may for the time being be confined in any prison."

Provision was made for fingerprinting[1] in the Regulation of 1896 applying to criminal prisoners[2]. A person on remand in custody or a convicted prisoner could be measured, photographed and fingerprinted.

The only difference between persons on remand and convicted persons was that the former could only be fingerprinted pursuant to a warrant issued by a magistrate on the application of a police officer not below the rank of Superintendent or, in the metropolitan area, the Commissioner or Assistant Commissioner of Police, while the latter cold be fingerprinted at any time without warrant.[3] If a prisoner on remand with no previous convictions was acquitted or discharged by the magistrate, his fingerprints were to be destroyed. Until 1948 these Regulations provided the only authority for the compulsory finger-printing of suspected persons.[4]

The Regulations did not cover persons charged with offence triable summarily.

The law was altered by section 40 of the Criminal Justice Act, 1948, replaced by the Magistrates' Courts Act, 1952, section 40 which (as subsequently amended)[5] is the principal legislative provision governing fingerprinting.

Section 40 (as amended) provides that where any person not less than 14 years of age who has been taken into custody or summoned is charged with an offence before a "magistrates" court, the court may, on the application of a police officer not below the rank of Inspector, order that his fingerprints or palm prints shall be taken by a constable[6].

IV. *Evidence illegally obtained in England*

Evidence not inadmissible because of force.

However, evidence extracted without the consent of the person concerned is not necessarily inadmissible. A note in the Law Quarterly Review[7] has put the position thus :

> "It is clearly reasonable and just that a strict rule should apply to confessions and to other statements made in answer to questions asked by the police. Such an answer or statement is not admissible unless it is shown to have been in the sense that it has not been obtained by any threats or inducements."

> "This distinction between statements and confessions on the one hand and what may be termed *physical evidence*[8] on the other is an entirely rational one, becuase the danger in the case of confessions and statements is that they may be false. On the other hand physical evidence cannot be affected by any threats or inducements. The Judges' Rules concerning the admission of confessions do not therefore apply to finger-prints."

V. *Position in Australia*

Photographs in Australia.

In Australia[9], the High Court had occasion to deal with the position relating to photographs at length. While noticing that section 81(4) of the Police Offences Act, 1953 to 1967 (State of South Australia) permitted the taking of photographs of a person in lawful custody on a charge of committing an offece for the purpose of establishing the identity of such

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1. Leigh, Police Powers in England and Wales (1975), pages 199-200.

2. Regulations for the Measuring and Photography of Criminal Prisoners, S.R. & O. 1986, No. 762, continued in force by Prisons Act, 1952, ss. 16 and 54(3).

3. S.R. & O. 1896, No. 762, paragrapus 3,4,5.

4. Sir J. Moylan, Scotland Yard (1929), pages 192—194.

5. By Criminal Justice Act, 1967, section 33.

6. Leigh, Police Powers in England and Wales (1975), page 200.

7. Note on *Callis* v. *Gunn*! (1963) 3 W.L.R. 935 (1964) 80 L.Q.R. 17, 18.

8. Note the expression 'physical evidence'.

9. *Queen* v. *Ireland*, (1970) 44 Australian Law Journal Reports 263, 268.

person with a person known to have committed the crime then under investigation, the High Court pointed out that the police officer had no power to require a person to submit to photography for any purpose other than the identification—that is, identification to the extent mentioned in the statute.

In this particular case photographs of the hand of the accused were taken and used to assist the medical expert in the formation of the opinion that the scratches on the right hand of the accused could have been caused by handling the knife of which the handle had been broken. The accused had been charged with committing murder of a woman in a kitchen, and amongst the knives found in a drawer in the kitchen, three had traces of human blood protein and the handle of one of them was broken. There was evidence that two days before this incident the handle had been intact.

The evidence in question was excluded in exercise of the discretion of the Court.

Evidence illegally obtained.

According to English as well as Australian practice, while the fact that evidence was illegally obtained, does not make it inadmissible, it can be a ground for exercising the discretion of the court in favour of excluding the evidence. The matter has been dealt with at some length in an article published in the Australian Law Journal[1] some time ago. In general, if the evidence has been obtained by 'oppressive conduct' or unfairly, the judge would exclude it in exercise of such a discretion. This proposition has been re-iterated in a fairly recent judgment[2] of the Privy Council where, however, on the facts, the evidence was allowed.

In Scotland, the position is more interesting, in as much as the evidence is *not admitted* unless the Judge in his discretion approves its admission[3].

VI. *Canada*

In Canada, in one reported case[4] in the Ontario Court of Appeal in 1973, consideration was given to the question whether it was proper for the prosecution to give evidence that an accused had refused to take part in an identification parade. In his summing up the trial judge said that there was no statutory authority to force an accused person, or a suspect, or a person at a police station, into a line up, and that it was for the jury to decide, on the totality of the evidence, what significance should be attached to Mr. Marcoux's refusal to participate in a *suggested* line up.

On appeal, two judges of appeal held that this direction did not conflict with the principle that no man should be compelled to incriminate himself. They said :

> "That privilege relates to the obtaining of oral confessions or statements from a prisoner. Here the evidence adduced relates to the conduct of the accused, not to something that he stated or did not state as to the charge against him. Thus it is not an invasion of his rights under the maxim (namely, the privilege against self-incrimination). It is but a circumstance which together with all the other circumstances the jury/are entitled to take into consideration."

In a dissenting judgment, Brooke J/A said that the privilege against self-incrimination vested in the appellant the right to refuse to participate in the line-up, and that to allow a negative inference to be drawn from the exercise of that right would amount to a partial denial of the right itself.

VII. *Civil law countries*

The position does not appear to be substantially different, even in the civil law countries. It is perhaps for this reason that, where necessary, some continental Codes of Cirminal Procedure contain specific provisions[5] in regard to the employment of coercive measures by the police for identification.

Sweden.

In Sweden, for identification by voice, on several occasions the suspect and other person have read a suitable text on tape which is later played back to the witness[6].

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1. D.C. Pearce, "Judicial Review of Search Warrant" (1970) A.L.J. 467, 481.

2. *King* v. *Reginam*, (1969) A.C. 304 (P.C.).

3. *King* v. *Reginam*, (1969) A.C. 304 ; (1968) 2 All E.R. 610, 612, 617 (P.C.).

4. *R.* v. *Marcoux and Solomon*, (1973) 23 CRNS 51 (Ontario) referred to by Departmental Committee on Evidence of Identification in Criminal Cases (1976), page 193.

5. E.g. section 81. a, German Code of Criminal Procedure.

6. Departmental Committee on Evidence of Identification in Criminal cases (1976), Appendix L, page 196, para 36.

APPENDIX 2

AMERICAN LAW AS TO FINGER PRINTS AND MEASUREMENTS

I. *U.S.A.—The basis for federal jurisdiction*

In the U.S.A., the basis for federal constitutional jurisdiction in the area of criminal procedure is most prominently the 14th Amendment of the Constitution. Its mandate—"due process" as a condition for restricting a person in respect of his life, liberty or property—has furnished the Federal Courts with a jurisdicton whereunder, to a large extent, they require the law enforcement agencies and the courts to conform to certain norms. These norms are mainly derived from the first ten amendments to the Constitution which contain various guarantees, includng certain guarantees relevant to criminal procedure.

By their terms, these amendments do not apply to the States, but many of them have become applicable to the States by virtue of a series of Supreme Court decisions construing the words "due process" in the Fourteenth amendment as embracing all the essentials of a fair trial and therefore as incorporating many of the fundamental rights guaranteed by the first ten amendments relevant to criminal proceedings. In other words, if a particular guarantee contained in the first ten amendments is so fundamental as to justify the view that it should be regarded as part of "due process", then the States also must conform to them. It is on this basis that the privilege against self-incrimination (the Fifth Amendment) and the protection against unreasonable search and seizure (the Fourth Amendment) have become applicable to the States.[1-2]

II. *Self-incrimination in U.S.A.*

Origin of the privilege against self-incrimination.

The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself". Similar guarantees are embodied in the Constitutions of every State, except Iowa and New Jersey. Iowa has read the privilege into its "due process clause" and New Jersey has adopted it by statute.[3-4]

The privilege against self-incrimination in the United States is universally interpreted as protecting the accused from compulsion to testify against himself by a threat of the contempt power.[5]

No compulsion and no adverse comment permitted.

The privilege is thus generally assumed to prohibit all forms of pressure on the accused to testify and also any adverse comment on him if he fails to testify. Asking the accused to take the stand and thus forcing him to claim the privilege affirmatively is also unconstitutional.

Evolution.

This concept of the privilege is the product of a complex history. In England,[6] suspicion of all interrogation of the accused emerged initially as a reaction to practices of the High Commission and the King's Star Chamber in enforcing unpopular religious and political laws in the late sixteenth and early seventeenth centuries. Accused persons were sometimes forced to testify against themselves by use of the contempt power and torture. In addition, since they were frequently not informed of any specific charge against them, they were compelled not merely to incriminate themselves, but also to provide the material for a charge.[7] In reaction the rule developed that the concempt power could not be used to compel an accused to testify, even after he had been specifically charged. The development of the accused's rights to counsel and to call witnesess, together with the tradition that the accused should not be put under oath, culminated in the nineteenth century in a general rule of compulsory silence. During this period the privilege acquired its greatest significance, since the enforced silence could not logically give rise to an inference of guilt.

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1. *Mapp.* v. *Ohio*, (1961) 367 U.S. 643.
2. *Malloy* v. *Hogan*, (1964) 378 U.S. 1.
3. *Amana Socty* v. *Salzer*, (1959) 250 Iowa 380, 383; 94 N.W. 2d 337, 339.
4. N.J. Rev. Stat. 2A : 84A-17 (Supp. 1963), See generally Model Code of Evidence rule 203, comment (1942).
5. McCormick, Evidence (1954), 126, 263 and 264.
6. G. Williams, The Proof of Guilt 26 (1961), pages 38—45 (3d ed. 1963).
7. See also *Ferguson* v. *Georgia*, 365 U.S. 570, 573—78 (History of incompetency doctrine).

Accused as witness.

When concern for the innocent led later in the 19th century to legislation enabling the accused to testify if he chose, the Acts in U.S.A. generally provided that no adverse inference should be drawn from failure to testify on part of the accused.

III. *U.S.A.—Non-testimonial compulsion permitted*

In a number of comparatively recent decisions, the Supreme Court of U.S.A. has indicated that not all evidence which an accused is compelled to supply is protected by the fifth amendment.[1-2] Thus, in *Schmerber* v. *California*,[3] the Supreme Court stated :

> "The distinction which has emerged.....is that the privilege is a bar against compelling 'communications' or 'testimony', but that compulsion which makes a suspect or accused the source of 'real or physical' evidence does not violate the privilege."

Employing this distinction, courts have upheld the following acts—(*i*) compelling an accused to participate in a line-up[4] (*ii*) to provide handwriting samples[5] voice exemplars[6], (*iii*) to provide blood samples,[7] and finger-prints[8] (*iv*) to dress in clothing related to the crime[9] and (*v*) to identify himself as being present at the scene of an accident[10-12].

The Supreme Court has explained that such procedures do not violate the privilege, because they compel the accused only to "exhibit his physical characteristics, not.....to disclose any knowledge he might have"[13].

In the latest case[14] relating to voice-prints, the view was reaffirmed that a handwriting exemplar (in contrast to the content of the work written) is, like the voice or body itself, an identifying physical characteristic outside the protection of the fifth amendment. It was emphasised that the voice recordings were to be used solely to measure the physical properties of the voice of the persons concerned, and not for the testimonial or communicative content of what has been said.

IV. *Due process*

Violation of due process, however, is not allowed where the police practice "shocks the conscience",—as where a stomach-pump is used to extract a substance from within the accused body. Such evidence is not admissible.[15]

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1. Aronson, "Payschistric Examination" (1973-74), 26 Stanford Law Review 55, 67, 68.

2. See 16 L. Ed. 2(d) 1332.

3. *Schmerber* v. *California*, (1966) 384 U.S. 757, 764. See also Gilbert V. *California*, (1967) 388 U.S. 263; *United States* v. *Wade*, (1967) 388 U.S. 218.

4. See *United States* v. *Wade*, (1967) 377 U.S. 218 (also permitting requirement that defendant speak for purpose of voice identification) : *United States* v. *Butto*, 393 p. 2d 783 (4h Cir. 1968).

5. *Gilbert* v. *California*, (1967) 388 U.S. 263, 265—67; *United States* v, *Doe*, 405 F. 32d 436 (2d Cir. 1968).

6. See *United S ates* v. *Dionisio*, (1973) 410 U.S. 1.

7. See *Schmerber v. California*, (1966) 374 U.S. 757.

8. See *United States ex. rel. O Halloran, v. Rundle*, 266 F. Supp. 173 (E.D. Pa.) af'd , 384 F. 2d 997 (3rd Cir. 1967), cert, denied, (1968) 393 U.S. 860.

9. See *United States* v. *Evans*, 359 F. 2d (3d Cir.) cert. denied, (1966) 385 U.S. 863 *Morrie* v. *State*, 184, 50 2d 199 (Fla. App. 1966).

10. See *California* v. *Byars*, (1971) 402 U.S. 424.

11. Case Law of Fedral Courts taken mainly from Aaronson, Psyehiatrio Examination (1973-74) 26 Stanford Law Review 55, 67, 68.

12. See further 21 Americal Jurispurdence, 2d. articles 314—316 (Criminal Law).

13. *United States* v. *Wade*. (1967) 388 U.S. 218, 222.

14. U.S. v. *Dionisio*, (1973) 410 U.S. 1, 6.

15. *Rochin* v. *California*. (1952) 342 U.S. 165.

A subsequent illinois decision seems hardly reconcilable with the Supreme Court decision *State* v. *Odom*. 353 S.W. 2d 708 (Mc. 1962).

The same test was applied to the extraction of a blood sample taken from an unconscious perpetrator though the test resulted in admissibility.[1]

An American writer, after mentioning the effect of a violation of constitutional guarantees (the exclusionary rule), adds[2]—

> "Included in this rule (due process) are—identification during a line-up without the presence of the legal counsel, confessions.....(taken) during the time of detention by the police if the prisoner had no opportunity to have legal counsel present."

Within the due process limitation, scientific evidence may unquestionably be produced from a defendant as long as the methods are relatively gentle and scientifically proper.[3] The demands of an urgent traffic law enforcement have contributed much to the admissibility of alcohol test results[4] and, for that matter, of radar speed evidence[5].

A suspect might be forced to wear particular clothing, where this was a material evidence in the identification[6].

V. *Finger-prints and photographs*

It appears that in the United States the compulsory taking of finger-prints and photographs from persons under arrest is a common practice[7].

Non-testimonial compulsion in U.S.A.

As already stated, what the constitution prohibits is physical or moral compulsion to extort communications from him, and not an exhibition of his body as evidence (when such evidence may be material)[8]. Therefore, no constitutional protection exists against compulsion to submit to giving fingerprints, photographing, or measurements, to write or to speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture.

Also, there is in the United States (from the constitutional point of view) no protection against requiring the accused persons to adopt a particular stance[9] or to give a specimen of his voice[10].

Question of legality

The question, thus, is only one of providing statutory authority for measurements or the procurement of other demonstrative evidence so that no liability in tort arises. It would be tedious to deal with the position in various States of the U.S.A.

According to one view[11], to take a finger print, photograph or measurement of an arrested person is not violation of the privilege against self-incrimination[12], nor a breach of privacy.

According to some courts, therefore, it is valid without statutory authority[13-14].

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1. *Breithaupt* v. *Abraham*, (1957) 352 U.S. 432. Delaware reached an opposite conclusion in *State* v. *Wolf* 164 A. 2d 865 (Del., 1960).

2. Peter Hay, Introuction to U.S. Law (1976),Page 193.

3. See *People* v. *Diicher*, 189 Cal. App.2d 720, Cal.Eptr.407 (1961), *Cf. Qotte* v. *State*,172 Neb. 110, 108 N.W. 2d 737 (1961)

4. E.g. *State* v. *Baker*, 56 Wash, 2d 846, 355 P. 2d 806 (1960); and see *State* v. *Ball*, 179 A. 2d 466 (Vt., 1962); *Bean* v. *State*, 12 Utab 2d 76, 362 P. 2d 750 (1962).

5. Fiscr, Vehicle Traffic Law(1961), pages 240-243.

6. *Holt* v. *U.S.*, (1910) 218 U.S. 245, 252 (Holmes J.)

7. Moreland, Criminal Procedure (1969), page 76, citing the leading case of *U.S.* v. *Kelly*, (1932) 55 Federal 2d 67 83 A.L.R. 122.

8. *Schmerber* v. *California*, (1967) 384 U.S. 757.,

9. *Gilbert*, v. *California*, (1967) 338 U.S. 263.

10. See "Voice prints , *infra* and *U.S.* v. *Wade*, (1967) 388 U.S. 218.

11. American Jurisprudence, 2nd Ed., Vol. 21, "Criminal Law", pages 393-394, articles 369-370.

12. See American Jurispurdence, Ist Ed.—"Privacy" article 27.

13. *United States* v. *Kelly*, (CA 2) 55 F. 2d 67, cited in the American Jurisprudence, 2d Ed., Vol. 21 "Criminal Law".

14. *Shannon* v. *The State*, 207 Ark 658, cited in the American Jurispurdence, 2d Ed., Vol 21, "Criminal Law", pages 393—394, articles 369—370.

But in some jurisdictions a different view is taken, and the taking of fignger prints or photograph without consent and without statutory authority is regarded as an actionable assault[1-2].

Model Code of pre-arraingment procedure.

It would appear on the whole that specific legal authority would be required for compulsory measures of identification. This position, if not expressly or elaborately discussed, seems to have been impliedly accepted in U.S.A. in recent times. For example, the Model Code of Pre-arriagnment procedure adopted by the American Law Institute permits the taking of finger prints of arrested persons for the purpose of investigation at the stage before commencement of trial[3].

The American Law Institute has proposed[4] that the courts generally should be empowered to issue, on grounds of reasonable suspicion, an order to appear for identification procedures, such procedures to include fingerprints, blood or urine samples, identification material that may be on the surface of the body or under finger-nails, and procedures to obtain witness identification through line-ups, photographs, voice samples or handwriting exemplars.

VI. *Voice prints.*

Voice prints.

Several courts on the federal and State levels in U.S.A. (including the Military Courts of Appeals), have accepted voice prints identification[5]. In an interesting case before the Military Court of Appeals[6], the use of voice printing in a case involving obscene telephone calls was upheld.

No privilaege as regards voice prints.

The privilege against self-incrimination in the U.S. does not extend to protect an accused person who is required to speak so that he may be identified[7].

However, it would appear that a court order is taken to compel the accused to submit to having a tape record made of his voice. Thus it is stated[8] that in the State of New Jersey the Superior Court granted a prosecutor's request for an order compelling an accused to submit to having a tape made of his voice so that the resulting voice-print might be compared with another voice-print[9].

Use of voice prints.

Voice prints are used to identify criminals who use the telephone to thereaten bombing of airlines and public buildings as well as those who make obscene telephone calls and put on the telephone threats of extortion and kidnappers who by telephone make demands for ransom[10].

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1. Filder v. Murphy, 113 N.T.S. 2nd 288, cited in the American Jurisprudence, 2d Ed., Vol. 21, "Criminal Law", pages 393-394.
2. See also cases cited in Black, Law Dictionary (1914), Vol. 2, page 2586, under "Physical Examination".
3. Section 5.01, Model Code of Pre-arraigment Procedure (American Law Institute).
4. Departmental Committee on Evidence of Identification in Criminal cases (1976), page 194, f.n.
5. Bennett Sandler, Law Enforcement and Criminal Justice pages 304-305
6. U.S. v. Wright, (1967) 17 U.S.M.A. 183.
7. *U.S.* v. *Wade* (1967) 388 *U.S.* 218.
8. Thomas Mc Dade, "The Voice-print (1970 Ju, Indian Police Journal, pages 26—34.
9. *State* v. *Mckenna*, (226A) II 757 Superior Court of New Jersey.
10. L.G. Kersta. "Voice-print identification and application" (1971) India Police Journal, pages 10—16.

APPENDIX 3

SELECTED CASES ON ARTICLE 21 OF THE CONSTITUTION—PROCEDURE ESTABLISHED BY LAW

1. *Maneka Gandhi* v. *Union of India*, A.I.R. 1978 S.C. 597; 1978(1) S.C.C. 248.

This was the first case spelling out the requirement of "procedure estalished by law" in Article 21 and its positive content.

2. *In the Special Courts Bill* 1978, A.I.R. 1979 S.C. 478, 516; 1979(1) S.C.C. 430, 433.

In this case, the Supreme Court, while upholding the constitutional validity of Special Courts Bill, 1978 with reference to Article 14, observed that the Bill had also got to meet the challenge of Article 21.

It was held by the majority in the *Maneka Gandhi case* that the procedure contemplated by Article 21 must be "right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied".

It was, therefore, imperative to examine whether the procedure prescribed by the Special Courts Bill was just and fair or was, in any respect, arbitrary or oppressive.

3. *Sita Ram* v. *State of Uttar Pradesh*, A.I.R. 1979 S.C. 745, 753, 1979(2) S.C.C. 656, 669.

In this case the Supreme Court, while considering the validity of the Supreme Court Rules (1966), Order 21, Rule 15(1)(*c*) and section 384 of the Code of Criminal Procedure, 1973, said that life and liberty had been the cynosure of special constitution attention in Article 21. The Court referred to *Maneka Gandhi* v. *Union of India* where the essence of the concept of natural justice as part of reasonable procedure had been brought out. That judgment showed how the Supreme Court had unravelled the fuller implications of Article 21 and how (since then) the Court had followed that prescription and even developed it in humane directions.

4. *Hussainara Khatoon* (*I*) v. *Home Secretary*, A.I.R. 1979 S.C. 1360, 1361; 1980(1) S.C.C. 81, 84.

In this case, the Supreme Court, while considering a petition for writ of *habeas corpus* said that there could be little doubt, after the dynamic interpretation placed by the Court on Article 21 in *Maneka Gandhi* v. *Union of India*, that a procedure which keeps such a large number of people behind the bars without trial so long cannot possibly be regarded as reasonable, just and fair as to be in conformity with the requirement of that Article.

5. *Hussainara Khatoon* (*IV*) v. *Home Secretary* A.I.R. 1979 S.C. 1369; (1979) 3 S.C.R. 532, 537.

In this case, while considering the rights of the accused and the constitutional obligation of the State, the Supreme Court referred to *Maneka Gandhi* v. *Union of India* and said that it was now well settled (as a result of the decision in *Maneka Gandhi's case*), that it was not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable, fair and just'. A procedure which did not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, could not possibly be regarded as 'reasonable, fair and just'. It is an essential ingredient of reasonable, fair and just procedure that a prisoner, who is to seek his liberation through the court's process, should have legal services available to him.

6. *Shri Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 S.C.C. 565, 586.

In this case, the Supreme Court, while determining the scope of section 438 of Code of Criminal Procedure, 1973 (anticipatory bail) and while discussing the question how best to balance the interests of personal liberty and the investigative powers of the police, said that section 438 was a procedural provision concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence. Since he is not (on the date

of his application for anticipatory bail), convicted of the offence in respect of which he seeks bail, an over-generous infusion of constraints and conditions which are not to be found in section 438 can make its provisions constitutionally vulnerable. The right to personal freedom *cannot be made to depend on compliance with unreasonable restrictions*[1].

The beneficient provision contained in section 438 must be saved, not jettisoned. After the decision in *Maneka Gandhi's case*, no doubt can survive that in order to meet the challenge of Article 21, the procedure "established by law" for depriving a person of his liberty must be fair, just and reasonanle.

7. *P.S.R. Sadhanantham* v. *Arunachaiam*, A.I.R. 1980 S.C. 856, 858-859.

In this writ petition the petitioner challenged the leave to appeal under Article 136 of the Constitution and subsequent proceedings as violative of Article 21, and hence unconstitutional. The Supreme Court was called upon to lay down the scope of Articles 136 and 21 of the Constitution. The court, while discussing the matter, said that Article 21 in its sublime brevity, guards human liberty by insisting on the prescription of "procedure established by law", and not a "fiat" as a "sine qua non for deprivation of personal freedom". And the procedure so established must be fair, not fanciful nor formal nor flimsy- *Maneka Gandhi's case* was referred to in this ontext. In express terms, Article 136 does not confer on a party a right to appeal as such, but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases.

(On the facts, leave to appeal already granted was upheld).

8. *Anand Vardhan Chandel* v. *University of Delhi*, A.I.R. 1978 Delhi 308, 314.

In this writ petition, the High Court answered in the affirmative the question whether there is a fundamental right to education to be spelt out of clauses (a), (b) and (c) of Article 19(1) and Article 21 of the Constitution. It said that the law is now settled by the *Maneka Gandhi's case* that the expression 'life and personal liberty' in Article 21 of the Constitution *includes a variety of rights, though they are not enumerated in Part III of the Constitution, provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual.*

9. *Inder Parkash* v. *Dy. Commissioner, Delhil* A.I.R. 1980 Delhi 87, 92.

In this case the High Court quashed the order cancelling the admission of the Petitioner as a medical student, on account of inordinate delay of about four years, during which the petitioner continued his studies. It referred to the *Maneka Gandhi* v. *Union of India* in order to show that the right to higher education or a professional education partakes of the nature of fundamental right, though not specifically mentioned in the Constitution. Any improper interference in such a pursuit would attract the fundamental right to carry on the profession.

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[1]. Emphasis added.

APPENDIX 4

IDENTIFICATION OF PRISONERS ACT, 1980—ANALYSIS OF SUBSTANTIVE PROVISIONS

Section	Persons affected	Nature of power conferred	Competent Authority
3	Convicted persons.	Measurements (As defined in the Act–this includes fingerprints).	Police officer. This means— (*i*) Police officer in charge of Police Station; (*ii*) Police officer making an investigation under Chapter XIV of Code of Criminal Procedure, 1898; or (*iii*) Any other Police officer not below the rank of sub-inspector.
3	Convicted persons.	Photographs.	Police officer. This means— (*i*) Officer in charge of a Police Station; (*ii*) Police officer making an investigation under Chapter XIV of Code of Criminal Procedure, 1898; or (*iii*) Any other police officer not below the rank of sub-inspector.
4	Arrested persons.	Measurements (As defined—this includes fingerprints).	Police officer (as defined in section 2(b).
5	Any person. (But he must have been arrested at some stage–see second proviso).	Measurements (As defined, it includes fingerprints.)	Magistrate.
5	Any person. (But he must have been arrested at some stage).	Photograph.	Magistrate of 1st Class (See first proviso).

81-M/J(N)56MofLJ&CA—1500—24-8-81—GIPS