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GOVERNMENT OF INDIA

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Report No.271

**Human DNA Profiling – A draft Bill
for the Use and Regulation of
DNA-Based Technology**

July, 2017

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DNA-Based Technology**

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Dr. Justice B. S. Chauhan
Former Judge, Supreme Court of India
Chairman
Law Commission of India
Department of Legal Affairs
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D.O. No.6(3)315/2017-LC(LS)

26 July 2017

Dear Shri Ravi Shankar Prasad ji,

I have great pleasure in forwarding herewith the Two Hundred and Seventy First Report of the Law Commission of India, titled "**Human DNA Profiling – A draft Bill for the Use and Regulation of DNA-Based Technology**".

Discovery of DNA is considered as one of the most significant biological discoveries during the 20th century owing to its tremendous impact on science and medicine. Of late, it is acting as a very useful tool of forensic science that not only provides guidance in criminal investigation and civil disputes, but also supplies the courts with accurate information about all the relevant features of identification of criminals. With a view to frame a legislation for the use and regulation of DNA-based technology in civil and criminal proceedings, and identification of missing persons and human remains, the Department of Biotechnology proposed a draft Bill titled "The Use and Regulation of DNA-based Technology in Civil and Criminal Proceedings, Identification of Missing Persons and Human Remains Bill, 2016". The Draft Bill was forwarded to the Law Commission of India in September 2016 for its guidance. The draft Bill was thoroughly examined in the light of a plethora of judicial pronouncements and the constitutional provisions. Thereafter the Commission has devised a new draft Bill titled "**The DNA Based Technology (Use and Regulation) Bill, 2017**" which has been annexed to the Report.

With warmer regards.

Yours sincerely,

[Dr. Justice B S Chauhan]

Shri Ravi Shankar Prasad

Hon'ble Minister for Law and Justice
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CHAPTER-I

Introduction

1.1 DNA stands for deoxyribonucleic acid, the strands of identity that living beings receive from their ancestors. Outside of identical twins, no two people have the same DNA pattern. DNA fingerprinting also has certain distinctive features.

1.2 In 1987, the DNA fingerprinting was utilised as a tool for criminal investigation, to establish blood relations and trace medical history. Investigators would find "anonymous DNA" at the crime scene and compare it with the DNA of suspects for possible matches. The investigator would generally use a swab to collect bodily substances from a suspect's mouth to match it with DNA collected from the crime scene.

1.3 Prior to the use of DNA, identification was heavily based on finger prints, foot prints, blood, or other evidence that a suspect may have left behind after committing a crime. The process of matching a suspect's DNA with DNA found at a crime scene has provided both law enforcement agencies and court officials with a higher probability of ascertaining the identity of offenders.

1.4 DNA fingerprinting has been very useful for law enforcement, as it has been used to exonerate the innocent. Unlike blood found at a crime scene, DNA material remains usable for an endless period of time. DNA technology can be used even on decomposed human remains to identify the victims.

1.5 Clinical trial and medical research has long been an important area of medical sciences as it has been referred to in large number of mythological and historical texts and scriptures.

1.6 The **Charaka Samhita** (textbook of medicine) and **Sushruta Samhita** (textbook of surgery) dating back to 200 B.C. and 200 A.D. respectively, focus on India's age old proficiency in medical science. Today, there are number of laws which govern clinical research in India, some of them being:

- Drugs and Cosmetics Act, 1940
- Medical Council of India Act, 1956 (Amended in 2002)
- Central Council for Medicine Act, 1970
- Guidelines for exchange of Biological Material (MOH Order, 1997)
- RTI Act, 2005

1.7 Since there are shortcomings in the existing legal provisions with regard to identification of individuals for specified purposes such as victims of disasters, missing persons, etc., the Department of Biotechnology came up with a draft Bill titled "The Use and Regulation of DNA-Based Technology in Civil and Criminal Proceedings, Identification of Missing Persons and Human Remains Bill, 2016." On 27 September 2016, the draft Bill was forwarded to the Law Commission of India for examination and its revision, if required.

1.8 DNA profiling technology, which is based on proven scientific principles¹, has been found to be very effective for social welfare, particularly, in enabling the Criminal Justice Delivery System to identify the offenders. Such tests relating to a party would definitely constitute corroborative evidence.² Appreciating the use and regulation of DNA based technology in judicial proceedings, particularly, identification of persons accused of offences under the Indian Penal Code 1860 (IPC) and other laws, identification of missing persons and disaster victims apart from its use in medical sciences; a need has long been felt to have a

¹ The DNA test has 99.99 % chance of correct conclusions and is perceived as an objective scientific test which may be difficult for an individual to refute. See: *Veeran v. Veeravarmalle & Anr.*, AIR 2009 Mad. 64; and *Harjinder Kaur v. State of Punjab & Ors.*, 2013 (2) RCR (Criminal) 146.

² *Simpson v. Collinson*, (1964) 1 All ER 262.

special legislation to regulate human DNA profiling. DNA analysis offers substantial information which if misused or used improperly may cause serious harm to individuals and the society as a whole.

1.9 The Commission considered the draft Bill and based on its examination of the relevant issues, it came to the conclusion that merely amending the Code of Criminal Procedure, 1973, may not serve the purpose. In view of the scope of the use and misuse of human DNA profiling, it has been felt that it is required to be regulated by a special law with well delineated standards, quality controls and quality assurance systems to ensure the credibility of the DNA testing, restricting it to the purposes laid down in the Act. Thus, there is a need to regulate the use of human DNA profiling through a standalone law of Parliament so that such use is appropriately regulated and restricted to lawful purposes only. The Law Commission while revising the draft Bill has also been conscious of the concerns raised by the Courts regarding appropriate use of DNA technology by making it necessary for the DNA testing centres to abide by the guidelines and standards which are listed in the Bill and the details thereof will be worked out in regulations.

CHAPTER-II

Ethical Framework

2.1 The ethical framework for human subject's protection has its origins in the ancient Hippocratic Oath, which specified that a primary duty of a physician was to avoid harming the patient. However, this oath was not necessarily respected in human experimentation and most advances in protection for human subjects came as a response to abuse inflicted on human subjects. Conducting research on human subjects essentially involves certain binding ethics and standards to be followed in a humane and culturally sensitive manner.

2.2 The **Declaration of Helsinki, 1964**, set the guidelines adopted by the **18th World Medical Association General Assembly**. It contains 32 principles, which stress on informed consent, confidentiality of data, vulnerable population and requirement of a protocol, including the scientific reasons of the study, to be reviewed by an Ethics Committee. The **Universal Declaration of Human Rights 1948** adopted by the United Nations General Assembly expressed concern about rights of human beings against involuntary maltreatment. The **International Covenant on Civil and Political Rights, 1966 (ICCPR)** has provided that *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his consent to medical or scientific treatment"*. It also refers to various "minimum guarantees" in Article 14(3)(g) such as, 'everyone has a right not to be compelled to testify against himself or to confess guilt'.

2.3 In 1988, the Human Rights Committee (HRC), a group of independent experts who issue authoritative interpretations of the ICCPR, released General Comment 16 on the right to privacy (Art. 17). In this General Comment, the HRC noted that 'the right to privacy is not absolute'.

2.4 The Indian Research Fund Association (IRFA) was founded 1911. This was re-named as Indian Council of Medical Research (ICMR), in 1949, under the Ministry of Health and Family Welfare to develop research culture and infrastructure to foster community support. In the year 1980, ICMR released a document called “Policy Statement on Ethical Considerations involved in Research on Human Subjects”. This was the first policy statement giving official guidelines for the establishment of Ethics Committees (ECs) in all medical colleges and research centres.

2.5 Comprehensive Ethical Guidelines for Biomedical Research on Human Subjects were finalised by ICMR in the year 2000, which researchers in India have to follow while conducting research on human subjects. The Drugs and Cosmetics Act, 1940 and the Medical Council of India Act, 1956 (Amended in 2002) provide that all clinical trials in India should follow these guidelines. These guidelines were revised in the year 2006, influenced by the Belmont Report and have the same three basic ethical principles: Respect for person, Beneficence, and Justice. These ethical principles are fortified by inducting the following twelve general principles of:

- (i) essentiality;
- (ii) voluntariness, informed consent and community agreement;
- (iii) non-exploitation;
- (iv) privacy and confidentiality;
- (v) precaution and risk minimisation;
- (vi) professional competence;
- (vii) accountability and transparency;
- (viii) maximisation of the public interest and of distributive justice;
- (ix) institutional arrangements;
- (x) public domain;
- (xi) totality of responsibility; and
- (xii) compliance.

CHAPTER-III

International Human Rights Law

3.1 Right to Privacy as a basic right was first enunciated in the **Universal Declaration of Human Rights, 1948**. Under the Declaration, no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, attacks upon his honour or reputation. Everyone has a right to protection by law against such interference or attacks. Further, the right to privacy has been included in several major human rights instruments like the **International Covenant on Civil and Political Right, 1966**; **The Convention on the Rights of the Child, 1989**; as well as Regional Human Rights Conventions in Latin America³, the Middle East⁴ and Europe⁵.

A. Recommendations by DNA Commission of the International Society for Forensic Genetics:

3.2 In an article titled as 'DNA Commission of the International Society for Forensic Genetics (ISFG) ⁶: recommendations regarding the role of forensic genetics for disaster victim identification (DVI)', the issue of establishing the identity of victims of a mass disaster, has been examined. Mass disasters can involve natural (e.g. earth quakes, volcano eruptions, avalanches, hurricanes, and tsunamis) or non-natural catastrophes (e.g. transportation accidents, terrorist attacks, wars, or political upheaval).

3.3 In this regard, the ISFG made certain recommendations on the role of forensic genetics in cases of DVI. In such cases the emergency

³ Organisation of American States, American Convention on Human Rights art.11, Nov.21, 1969 O.A.S.T.S. No.36, 1144 U.N.T.S. 123 (entered into force July18, 1978)

⁴ Cairo Declaration on Human Rights in Islam, art.18U.N.GAOR, 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add18 (Aug 5, 1990)

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms art.5, Nov.4, 1950, 213, U.N.T.S. 222 (entered into force Sept 3, 1953) as amended by Protocols Nos. 3,5,8 and 11 (entered into force Sept 21, 1970, Dec., 20, 1971, Jan 1 1990 and Nov 1 1998 respectively)

⁶ Published in FSI Genetics, Forensic Science International Genetics 1 (200) 3-12

response is multidisciplinary and is shared by many agencies dealing with deceased victims in matters such as body removal, victim identification and the issuance of the death certificates. This is normally the domain of municipality or a locally body. The IFSG made the following recommendations:

1. Every forensic DNA laboratory should make an effort to contact the relevant authority dealing with emergency response and establish involvement in a possible mass fatality preparedness plan. Policy decisions about sample collection, scope and final goals of the effort will affect the victims' families and the work stream and should be decided as early as possible.
2. The internal response plan needs to address turnout capacity, sample tracking, and must have names of supervisors responsible for different tasks that are updated as personnel changes.
3. Several sample types for DNA testing should be taken at the earliest possible stage of the investigation provided traceability is guaranteed. Samples must be collected from each body or recognizable body part, even if identity is already established. Proper storage must also be assured.
4. A single accurate reported missing list is of crucial importance for streamlining the DNA identification process. Any submissions of personal effects or family swabs need to be subsumed under a single case number. If multiple agencies or companies share sample collection and/or testing, the case number should remain constant.
5. Multiple direct references and samples from first-degree relatives should be collected for each missing person. Scientists with a background in genetics should be available for training or for consultations in the family liaison group.
6. DVI-DNA testing should only be performed by laboratories with demonstrated successful capabilities and continuous experience with these specified sample types.
7. The set of loci to be analysed has to be identified as soon as possible in concordance with the scientific community in the countries mostly involved. A minimum of 12 independent loci should be selected as standard set, but an even greater number of loci is preferred.
8. All allele calls and all candidate matches have to be reviewed thoroughly. Composite DNA profiles can be generated if derived from the same specimen and consistent for overlapping loci. The

duplication policy should consider the logistics and circumstances of the mass fatality incident.

9. If the standard autosomal STR typing fails to give sufficient information, additional typing system such as mtDNA, Y-chromosomal STRs, or SNP markers may be used in selected cases.
10. A centralized database is required for all data comparison. Electronic upload is recommended to avoid transcription errors.
11. Especially if multiple family members are involved, DNA-based identification should whenever possible be anchored by anthropological and/or circumstantial data, a second identification modality, or multiple DNA references.
12. In DVI work, DNA statistics are best represented as likelihood ratios that permit DNA results to be combined among multiple genetic systems or with other non-DNA evidence. Likelihood ratio thresholds should be determined for when DNA data alone can suffice for an identification; this will be based on the size and circumstances (e.g. closed versus open) of the event. All evidence and/or circumstances should be checked in making an identification, even if DNA provides the primary or sole evidentiary factor.
13. The preparedness plan of the laboratory needs to include policies for family notification, long-term sample disposition, and data archiving.

3.4 Keeping in view the possibility of future mass fatalities it is desirable and necessarily required to train forensic geneticists in DVI tasks and response planning. The skills involved in DVI are closely related to both DNA testing in criminal cases and kinship investigations. Validated procedures and the adherence to good laboratory practices will minimise false, negative results and increase the reliability of the identifications. DNA should not be considered the sole tool for identification, as many circumstances will allow for faster identification of the victims using dental records or fingerprint characteristics⁷. Moreover, consistent results across multiple modalities will also improve

⁷R. Lessig, C. Grundmann, F. Dahmann, K. Roßtscher, J. Edlmann, P.M.Schneider, Tsunami 2004—a review of 1 year of continuous forensic medical work for victim identification, *EXCLI J.* 5 (2006) 128–139.

the confidence level for each identification. An interdisciplinary approach is encouraged and modalities of it need to be worked out early amongst the DVI team members.

B. Ethical and Practical Issues relating to DVI:

3.5 A number of ethical and sensitive issues arise during the identification of human remains in the particular case of DVI. One major factor that undermines cremation or exhumation and identification efforts is poor communication with the relatives of the missing. Understanding the survivor population is important, yet difficult because the effects of mass casualties on a population are varied and complex as such instances cause people to lose not only their family members and relatives, but also their means of income. It can deprive children of their parents as well as their roots. Survivors suffer from not only the deaths of their family members, but also a series of other traumas⁸.

3.6 A range of legitimate purposes prevail for the exploration of human remains in case of DVI. The issues and questions raised hereinabove are specifically related to searching for the purpose of identifying missing persons. The main guiding principle is to assist the families of the missing.

C. Ethical-legal problem of DNA databases in criminal investigation:

3.7 Advances in DNA technology and the discovery of DNA polymorphisms have facilitated the creation of DNA database of individuals for the purpose of criminal investigation⁹. Many ethical and

⁸From Dust to Dust: Ethical and Practical Issues Involved in the Location, Exhumation, and Identification of Bodies from Mass Graves by Erin D. Williams, John D. Crews. Croatian Medical Journal 44(3):251-258, 2003

⁹ Schneider PM. Datenbankenmitgenetischen Merkmalen von Straftatfern (Criminal DNA databases: data protection and security). Datenschutz und Datensicherheit 1998; 22:330-3.

legal problems arise in the preparation of a DNA database, and these problems are required to be properly addressed by the legal provisions on the subject. There are three possibilities in which database can be created and dealt with, each of them has advantages and drawbacks. Besides, controversial issues arising in each of these possibilities are required to be examined for selecting one of the possibilities according to the specific need.

- (i) A system based on a general DNA fingerprinting analysis of the population and a conservation of the DNA profile analysis of all the evidence found at the crime scene.
- (ii) A system based on the DNA analysis of samples for a particular list of crimes only and the recording of the DNA profiles of all the evidence found at the crime scene for these particular crimes.
- (iii) A system based only on the specific analysis of a case, the taking of samples from an individual who is known to be connected to a fairly high degree with the crime under investigation and a comparison of the evidence which has been collected in this particular investigation.¹⁰

3.8 When the DNA analysis of evidence found at the crime scene (for example blood, hair, saliva, sperm, etc.) is compared with the analysis of samples which make up the database, the investigators can locate the possible perpetrator of the crime.

¹⁰ Ethical-legal problems of DNA databases in Criminal investigation (Margarita Guillen, Maria Victoria Lareu, Carmela Pestoni, Antonio Salas and Angel Carracedo University of Santiago de Compostela, Spain) in *Journal of Medical Ethics* 2000; 26:226-271.

CHAPTER-IV

Constitutional and Legal Aspects of DNA Profiling

4.1 The Constitution under Article 51A(h) and (j) casts a duty on every citizen of India 'to develop the scientific temper, humanism and the spirit of inquiry and reform' and 'to strive towards excellence in all spheres of individual and collective activity'. Parliament is competent to undertake legislations which encourage various technological and scientific methods to detect crimes, speed up investigation and determine standards in institutions for higher education and development in technical institutions (Entry 65 & 66 of the Union List). The other relevant provisions of the Constitution are, (i) Article 20(3) which guarantees a right against the self-incrimination; and (ii) Article 21 which guarantees protection of life and liberty of every person.

A. Indian Evidence Act, 1872:

4.2 Section 9 of the Indian Evidence Act, 1872 deals with 'facts necessary to explain or introduce a fact in issue or relevant fact'. Section 45 provides as to how the Court has to form an opinion upon a point of foreign law or of science or art, or identity of handwriting [or finger impressions] etc. Section 51 refers to grounds when opinion becomes relevant. Section 112 provides that birth during the continuance of a valid marriage is a conclusive proof of legitimacy with only exception that the parents had no access to each other during the period of conception. Under section 114 the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

4.3 If the evidence of an expert is relevant under section 45, the ground on which such opinion is derived is also relevant under section 51. Section 46 deals with 'facts bearing upon opinions of experts'. The opinion of an expert based on the DNA profiling is also relevant on the

same analogy. However, whether a DNA test can be directed or not has always been a debatable issue.

B. Criminal Procedure Code,1973:

4.4 Section 53-A was added vide the Code of Criminal Procedure (Amendment) Act, 2005 w.e.f 23-6-2006, providing that an accused of rape can be examined by a medical practitioner, which will include taking of bodily substances from the accused for DNA profiling.

4.5 It is noteworthy that, the said Amendment substituted the Explanation to sections 53 and 54, and made it applicable to section 53A as well, to clarify the scope of 'examination', especially with regard to the use of modern and scientific techniques including DNA profiling. Section 53 authorises the police officials to get medical examination of an arrested person done during the course of an investigation by registered medical practitioner. The Explanation provides that "*Examination shall include the examination of blood, blood-stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including **DNA profiling** and such other tests which the registered medical practitioner thinks necessary in a particular case*".

4.6 Section 311-A was also added to empower the Magistrate to order a person to give specimen signatures or handwriting.

C. Judgments Dealing with Self-incrimination of Persons vis-à-vis Article 20(3) of the Constitution

4.7 A judgment rendered by an eleven-Judges Bench of the Supreme Court in *State of Bombay v. Kathi Kalu Oghad & Ors.*¹¹ dealt with the issue of self- incrimination and held:

...Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the

¹¹ AIR 1961 SC 1808

information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. Example was cited of an accused who may be in possession of a document which is in his writing or which contains his signature or his thumb impression. It was observed that production of such document with a view to comparison of the writing or the signature or the impression of the accused is not the statement of an accused person, which can be said to be of the nature of a personal testimony. I may quote another relevant observation of this Court:

When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness.

[Emphasis added]

4.8 Thus, the Court concluded that giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness' as the latter would mean imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

4.9 In *Smt. Selvi & Ors. v. State of Karnataka*,¹² a three-Judge Bench of the Supreme Court considered whether involuntary administration of certain scientific techniques like narco-analysis, polygraph examination and Brain Electrical Activation Profile (BEAP) tests and the results

¹² AIR 2010 SC 1974

thereof are of a '*testimonial character*' attracting the bar of Article 20(3) of the Constitution. The Court held:

...it was observed that the scope of '*testimonial compulsion*' is made clear by two premises. The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to '*personal testimony*' thereby coming within the prohibition contemplated by Article 20(3). In most cases, such '*personal testimony*' can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators. The bar of Article 20(3) can be invoked when the statements are likely to lead to incrimination by themselves or furnish a link in the chain of evidence. It was held that all the three techniques involve testimonial responses. They impede the subject's right to remain silent. The subject is compelled to convey personal knowledge irrespective of his/her own volition. The results of these tests cannot be likened to physical evidence so as to exclude them from the protective scope of Article 20(3). This Court concluded that compulsory administration of the impugned techniques violates the right against self-incrimination. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in issue. The results obtained from each of the impugned tests bear a testimonial character and they cannot be categorized as material evidence such as bodily substances and other physical objects.

4.10 In *Ritesh Sinha v. State of U.P.*¹³ the questions arose as to whether a Voice Spectrographic Test without the consent of a person offends Article 20(3) of the Constitution and in case the said provision is not violated, whether a magistrate, in absence of any statutory provision or inherent power under the provisions of the Criminal Procedure Code

¹³ (2013) 2 SCC 357; See also *Murlidhar Meghraj v. State of Maharashtra* AIR 1976 SC 1929. *Kisan Trimbak Kothula & Ors. v. State of Maharashtra* AIR 1977 SC 435; and *State of Maharashtra v. Natwarlal Damodardas Soni* AIR 1980 SC 593.

1973 (Cr. P.C.) has competence to direct a person to be subjected to such a test without his consent.

4.11 The Court held that taking such test would not violate the mandate of Article 20(3) of the Constitution as has been held by the Supreme Court in *Selvi*¹⁴. However, there had been different views on the second question.

4.12 The Hon'ble Justice Ranjana Desai observed:

In light of this attempted analogy, we must stress that the DNA profiling technique has been expressly included among the various forms of medical examination in the amended explanation to Sections 53, 53A and 54 of the Cr. P.C. It must also be clarified that a 'DNA profile' is different from a DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law-enforcement agencies. The matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. It may also be recalled that the as per the majority decision in *Kathi Kalu Oghad*, (*State of Bombay v. Kathi Kalu Oghad & Ors.*, AIR 1961 SC 1808) the use of material samples such as fingerprints for the purpose of comparison and identification does not amount to a testimonial act for the purpose of Article 20(3). **Hence, the taking and retention of DNA samples which are in the nature of physical evidence does not face constitutional hurdles in the Indian context. However, if the DNA profiling technique is further developed and used for testimonial purposes, then such uses in the future could face challenges in the judicial domain.**

[Emphasis added].

4.13 However, another judge Hon'ble Justice Aftab Alam observed:

There are, indeed, precedents where the court by the interpretative process has evolved old laws to meet cotemporary challenges and has planted into them contents to deal with the

¹⁴ Supra note 12

demands and the needs of the present that could not be envisaged at the time of the making of the law. But, on the question of compelling the accused to give voice sample, the law must come from the legislature and not through the court process.

[*Emphasis added*]

4.14 However it is to be noted that due to the difference of opinion in the bench, the matter is pending consideration before the larger bench.

4.15 In *Kalawati v. State of H.P.*¹⁵ and *Ramanlal Bhogilal Shah v. D.K. Guha*¹⁶, the Supreme Court held that Article 20 (3) does not apply at all to a case where the confession is made by an accused without any inducement, threat, or promise. In view of the provisions of sections 24-27 of the Indian Evidence Act, 1872, and section 162 of the Code of Criminal Procedure 1973, it is an obligation on the judiciary to ensure that confession of the accused is not procured by an inducement, threat, promise, or fear¹⁷. Section 24 of the Evidence Act, 1872 is an extension of right to silence guaranteed under Article 20(3) of the Constitution, as it clarifies that any information given by an accused under inducement, threat or promise is irrelevant under criminal proceedings, going by the maxim *nemo debet prodere se ipsum*, i.e., no one can be required to be his own betrayer.¹⁸ An accused has a right to refuse to produce self-incriminating documents¹⁹.

4.16 The Supreme Court in *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for women*²⁰, whilst pressing upon the significance of DNA testing in the process of administration of justice held:

¹⁵ AIR 1953 SC 131

¹⁶ AIR 1973 SC 1196

¹⁷ *State of U P v. Deoman Upadhyaya*, AIR 1960 SC 1125

¹⁸ Shiv Narayan Dhingra, “Right to Silence of the Accused Under Constitution of India”, 41 JCPS 32 (2007)

¹⁹ *State of Gujarat v. Shyamlal Mohanlal Choksi*, AIR 1965 SC 1251

²⁰ AIR 2010 SC 2851

when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed.

4.17 In *Krishan Kumar Malik v. State of Haryana*²¹, the Supreme Court explained that even in the absence of section 53A Cr. P.C., DNA profiling could be permissible under law. The Court observed:

Now after the incorporation of section 53A in Criminal Procedure Code with effect from 23.06.2006.....it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provisions in Cr. P.C., the prosecution could have still resorted to this procedure of getting the DNA test.....to make it a fool proof case.....

4.18 In *Sudhir Chaudhary & Ors. v. State (NCT of Delhi)*,²² the Supreme Court held that an accused can be directed to give a voice sample as it was not the testimony but rather it constituted identification data.

4.19 In *Leena Katiyar v. State of U.P. & Ors.*,²³ the Allahabad High Court held that even in absence of any inherent power or statutory authorisation, the Magistrate is competent to direct an accused to give voice sample for identification in view of the provisions of section 165 read with section 65B of the Indian Evidence Act, 1872. But the Gujarat High Court, in *Natwarlal Amarshibhai Devani v. State of Gujarat & Ors.*,²⁴ took a contrary view observing that in absence of any provision enabling the Magistrate to order Voice Spectrographic Tests, the Court was not competent to direct an accused to give the voice sample.

²¹ (2011) 7 SCC 130

²² (2016) 8 SCC 307

²³ 2015 Cri LJ 4683

²⁴ 2017Cri LJ 1911

4.20 In *Naveen Krishna Bothireddy v. State of Telangana*²⁵, the Andhra Pradesh High Court upheld the order passed by the trial court directing the accused to undergo medical tests/ potency test or erectile dysfunction (ED) test, observing that such tests do not violate the mandate of Article 20(3) and Article 21 of the Constitution.

4.21 The Courts have persistently held that in case the accused does not want to undergo such tests the Court is at liberty to draw adverse inference under Illustration (h) of section 114 of the Indian Evidence Act, 1872²⁶. However, in *Rohit Shekhar v. Narayan Dutt Tiwari & Ors.*²⁷, the Delhi High Court held that “a person can be forced to undertake the test for the reason that the valuable right of the party cannot be taken away by asking the said party to be satisfied with comparatively weak adverse inference”.

4.22 In *Goutam Kundu v. State of West Bengal*,²⁸ the Supreme Court observed:

- (1) that courts in India cannot order blood test as a matter of course;
- (2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
- (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.
- (4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
- (5) No one can be compelled to give sample of blood for analysis.

²⁵ 2017 (1) ALT (CrI.) 422 (A.P.)

²⁶ *Ibid*, *Thogorani @ K Damyanti v. State of Orissa & Ors.*, 2004 CrI. LJ 4003; *Sulabai v. Jagannath & Anr.*, 1972 Cr.LJ 1392; *Venkateshwarulu v. Subbaya*, AIR 1951 Mad 190; *Subayya Gounder v. Bhoopala*, AIR 1959 Mad 396; and *Harjinder Kaur*, supra note 1.

²⁷ 2012 (2) RCR (CrI.) 889

²⁸ AIR 1993 SC 2295

4.23 In *Kanti Devi v. Poshi Ram*,²⁹ the Court dealt with the issue of determining the paternity of a child and held:

The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act, e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain un rebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above.

4.24 However, in *Nandlal Basudev Badwaik v. Lata Nandlal Badwaik*³⁰ the Court held that depending on the facts and circumstances of the case, it would be permissible for the Court to direct the DNA examination to determine the veracity of the allegation(s) made in a case. If the direction to hold such a test can be avoided, it should so be avoided. The reason is that the legitimacy of the child should not be put to peril.

D. Right to privacy- Under Article 21 of the Constitution

4.25 The issue has been raised time and again whether right to privacy is a fundamental right guaranteed under the Constitution. If the answer is in the affirmative, then the source and the contours of such a right, in view of the fact that there is no provision in Constitution that expressly provides for a right to privacy, needs to be worked out. In *M P Sharma v. Satish Chandra*,³¹ an eight-Judges Bench of the Supreme

²⁹ AIR 2001 SC 2226

³⁰ AIR 2014 SC 932; See also: *Dharam Deo Yadav v. State of U P*, (2014) 5 SCC 509; and *Dipanwita Roy v. Ronobroto Roy* (2015) 1 SCC 365

³¹ AIR 1954 SC 300

Court denied the existence of such a right while dealing with the case of search and seizure, observing:

....A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution-makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction.

4.26 Similarly, in *Kharak Singh v. State of Uttar Pradesh*,³² a six-Judges Bench reiterated a similar view observing:

....Nor do we consider that Article 21 has any relevance in the context as was sought to be suggested by the learned counsel for the petitioner., the right of privacy is not a guaranteed right under our Constitution and, therefore, the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III.

4.27 In *Ram Jethmalani v. Union of India*,³³ Supreme Court dealt with the right of privacy elaborately and held as under:

Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.... The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values.... The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others.

³² AIR 1963 SC 1295

³³ (2011) 8 SCC 1

4.28 In *R Rajagopal v. State of Tamil Nadu*³⁴, the Supreme Court held:

The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family marriage, procreation, motherhood, child-bearing and education among other matters....

4.29 Similar view has been reiterated by the Court observing that right to privacy is a right of the citizen, being an integral part of Article 21 of the Constitution of India. Illegitimate intrusion into privacy of a person is not permissible as the right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. However, right to privacy may not be absolute, as in exceptional circumstances, particularly, in case of surveillance in consonance with the statutory provisions reasonable restrictions may be imposed on such a right. (Vide: *State of Maharashtra v. Madhukar Narayan Mardikar*,³⁵; *Anuj Garg v. Hotel Association of India*³⁶; *Bhavesh Jayanti Lakhani v. State of Maharashtra*³⁷; and *Selvi v. State of Karnataka*³⁸.)

4.30 “**The Right to Privacy**” by **Charles Warren** and **Louis D. Brandeis**.³⁹ is a good starting point for a discussion on the legal concept privacy. The article opines that privacy or the right to be let alone, was an interest that man should be able to assert directly and not derivatively from his efforts to protect other interests. The right to privacy has also been held to be a fundamental right of the citizen by the apex Court in *R. Rajagopal v. State of Tamil Nadu*;⁴⁰ *People’s Union for Civil Liberties*

³⁴ AIR 1995 SC 264

³⁵ AIR 1991 SC 207

³⁶ AIR 2008 SC 663

³⁷ (2009) 9 SCC 551

³⁸ Supra note 12

³⁹ 4 *Harvard L.R.* 193 (1890).

⁴⁰ Supra Note 34

(PUCL) v. Union of India,⁴¹ Mr. 'X' v. Hospital 'Z',⁴² People's Union for Civil Liberties (PUCL) v. Union of India;⁴³ and Sharda v. Dharmpal⁴⁴.

4.31 In *District Registrar and Collector, Hyderabad v. Canara Bank*,⁴⁵ the Supreme Court held that right to privacy is a personal right distinct from a right to property. Intrusions into it by the legislature, is to be tested on the touchstone of reasonableness and for that purpose the Court can go into the proportionality of the intrusion *vis-a-vis* the purpose, sought to be achieved as “right to privacy” is part of the right to life enshrined in Article 21 of the Constitution of India. While deciding the said case, the Court placed reliance upon a large number of its earlier judgments, including *Maneka Gandhi v. Union of India*⁴⁶. The Court held that an illegitimate intrusion into privacy of a citizen is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under Article 21 of the Constitution.

4.32 In *State of Maharashtra & Anr. v. Madhukar Narayan Mardikar*⁴⁷ the Supreme Court observed that “even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes.” However, such a right can be subject to restrictions when there are compelling questions of public interest⁴⁸. Police can have surveillance on a person only in accordance with the rules framed for that purpose as right to privacy is not absolute⁴⁹.

⁴¹ AIR 1997 SC 568

⁴² AIR 1999 SC 495

⁴³ AIR 2003 SC 2363

⁴⁴ AIR 2003 SC 3450

⁴⁵ AIR 2005 SC 186

⁴⁶ AIR 1978 SC 597

⁴⁷ AIR 1991 SC 207

⁴⁸ *Malak Singh v. State of Punjab*, AIR 1981 SC 760

⁴⁹ *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378; (see also: *Bhavesh Jayanti Lakhani v. State of Maharashtra*, Supra Note 37; and *Roe v. Wade*, 410 U.S. 113 (1973)).

4.33 In *Justice K S Puttaswamy (Retd.) v. Union of India*,⁵⁰ the Supreme Court while dealing with the case of “**Aadhar card**” (UIDAI) observed that there have been contradictory judgments on the issue but the law laid down in *M P Sharma*⁵¹ and *Kharak Singh*⁵², if read literally and accepted as a law, the fundamental rights guaranteed under Article 21 would be denuded of vigour and vitality. The Court referred the matter to a larger bench for authoritative interpretation of law on the issue.

4.34 In the *R.K. Dalmia v. Justice S.R. Tendolkar*⁵³, the Court held:

that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;...

4.35 Further, the case of *M. Nagaraj & Ors. v. Union of India & Ors.*⁵⁴ is referred to elucidate the concept of right to dignity in the following manner:

... This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees.

4.36 While examining the constitutional validity of a law providing restrictions on fundamental rights, the proportionality of measures taken becomes relevant. The ‘compelling State interest’ is just one aspect of the broader ‘strict scrutiny’ test, which was applied by the Court in *Anuj Garg v. Hotel Association of India*⁵⁵. The other essential facet is to demonstrate ‘narrow tailoring’, i.e., the State must demonstrate that even

⁵⁰ (2015) 8 SCC 735

⁵¹ Supra note 31

⁵² Supra note 32

⁵³ AIR 1958 SC 538

⁵⁴ (2006) 8 SCC 212

⁵⁵ Supra note 36

if a compelling interest exists, it has adopted a method that will infringe in the narrowest possible manner upon individual rights.

4.37 In the case of *People's Union for Civil Liberties v. Union of India & Ors.*⁵⁶, the Court has endorsed bio-metric identification of homeless persons also so that benefits like supply of food and kerosene meant for persons who are Below Poverty Line reaches to the genuine persons.

4.38 In the case of *Lokniti Foundation v. Union of India & Ors.*,⁵⁷ the Supreme Court disposed of the writ petition upon being satisfied that an effective process has been evolved to ensure identity verification and approved the Aadhar card based verification of existing and new mobile number subscribers.

4.39 In *Binoy Viswam v. Union of India & Ors.*⁵⁸, the Supreme Court examined the validity of the provisions of section 139AA of the Income Tax Act, 1961, which provided for quoting of Aadhar Number with Permanent Account Number and held as under:

that those who are not PAN holders, while applying for PAN, they are required to give Aadhaar number. This is the stipulation of sub-section (1) of Section 139AA, which we have already upheld. At the same time, as far as existing PAN holders are concerned, since the impugned provisions are yet to be considered on the touchstone of Article 21 of the Constitution, including on the debate around Right to Privacy and human dignity, etc. as limbs of Article 21, we are of the opinion that till the aforesaid aspect of Article 21 is decided by the Constitution Bench a partial stay of the aforesaid proviso is necessary. Those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Act.

4.40 Section 8(j) of the Right to Information, Act 2005 provides that disclosure of personal information which could cause unwarranted

⁵⁶ Supra note 41

⁵⁷ Writ Petition (C) No. 607 of 2016 decided on February 06, 2017.

⁵⁸ WP (C) No.277 of 2017 decided on June 09, 2017.

invasion of the privacy of the individual, cannot be furnished unless it is necessary in larger public interest.

E. Expert Opinion as evidence

4.41 In cases where expert opinion is required by the court, it becomes incumbent on the expert to assist the court by putting all the relevant materials together with the exact reasons which led him to come to a conclusion (and not the finding as such) so that the court may draw its own conclusion after going through those materials.

4.42 In *Tomaso Bruno v. State of U.P.*⁵⁹, it was observed:

The courts normally would look at expert evidence with greater sense of acceptability but the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory and unsustainable. The purpose of an expert opinion is primarily to assist the court in arriving in a final conclusion but such report is not a conclusive one. The court is expected to analyze the report, read it in conjunction with the other evidence on record and form its final opinion as to whether such a report is worthy of reliance or not.

4.43 In *Ramesh Chandra Aggrawala v. Regency Hospitals*,⁶⁰ the court held:

“The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear expert evidence. The test is that the matter is outside the knowledge and experience of the lay person...The scientific question involved is assumed to be not within the court’s knowledge. Thus, cases where the science involved, is highly specialized and perhaps even esoteric, the central rule of expert cannot be disputed. The other requirements of the admissibility of expert evidence are; (i) That the expert must be within a recognized field of expertise (ii) That the

⁵⁹ (2015) 7 SCC 178

⁶⁰ AIR 2010 SC 806

evidence must be based on reliable principles and (iii) that the expert must be qualified in that discipline ...”

[Emphasis added]

4.44 In *Prem Sagar Manocha v. State (NCT of Delhi)*⁶¹ the court held:

The duty of an expert is to furnish the court his opinion and the reason for his opinion along with all the materials. It is for the court thereafter to see whether the basis of the opinion is correct and proper and then form its own conclusion.

the expert gives an opinion on what he has tested or on what has been subjected to any process of scrutiny. The inference drawn thereafter is still an opinion based on his knowledge. In case, subsequently, he comes across some authentic material which may suggest a different opinion, he must address the same, lest he should be branded as intellectually dishonest. Objective approach and openness to truth actually from basis of any opinion.

4.45 While deciding the said case, the Court placed reliance upon a judgment in *National Justice Compania Naviera SA v. Prudential Assurance Co. Ltd.*⁶² and stated:

"if an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report" (*Derby & Co Ltd and Others v Weldon and Others, The Times, Nov 9, 1990 per Lord Justice Staughton*).

4.46 The evidence procured through sophisticated machines must be given due weightage and there can be no justification to reject the opinion of the expert who has examined the case microscopically⁶³. The fingerprint examination is conclusive as it is an exact science.⁶⁴

⁶¹ AIR 2016 SC 290

⁶² (1995) 1 Lloyd's Rep 445, QB (Commercial Division)

⁶³ *Ramanathan v. State of Tamil Nadu* AIR 1978 SC 1204

⁶⁴ *Jaspal Singh v. State of Punjab*, AIR 1979 SC 1708.

4.47 While dealing with the provisions of section 112 of the Indian Evidence Act, 1872, on the issue of determining the paternity of the child, the courts held that DNA testing should be made permissible only on the direction of the court as no person can be forced to give his blood without such direction⁶⁵. The Supreme Court in paternity cases has rejected the prayer for permitting DNA evidence and has relied solely on the non-access principle⁶⁶.

4.48 The Sixteenth Law Commission, in its 185th Report submitted in 2003, proposed certain amendments to section 112 which are still pending for consideration. The Commission also dealt with exceptions like “(1) Impotence or sterility; (2) blood tests proving a man is not the father and (3) DNA tests proving a man is not the father.”

4.49 In the case of *Sharda v Dharampal*⁶⁷, the Court observed that if everyone started using Article 21 as a shield to protect themselves from going through the DNA test then it will be impossible to arrive at a decision. The Delhi High Court also held that DNA testing does not amount to violation of any of the rights⁶⁸.

4.50 There can be no dispute with regard to the settled legal proposition that statutory provisions and binding legal principles cannot constitute “compulsion” as to violate the basic or constitutional rights of any person. Enforcement of such principles is itself a constitutional obligation⁶⁹.

⁶⁵ *Sadashiv Mallikarjun Khedarkar v. Nandini Sadashiv Khedakar* 1995 Cri. L. J. 4090(Bom)

⁶⁶ *Kanti Devi v. Poshil Ram*, AIR 2001 SC 2226

⁶⁷Supra note 44

⁶⁸ *Kanchan Bedi v. Shri Gurpreet Singh*, AIR 2003 Delhi 446

⁶⁹ *Andhra Sugar v. State of Andhra Pradesh*, Air 1968 SC 599; *Siddheshwar Sehkar Sakhar Karkhana Ltd. v. CIT Kolhapur & Ors.*, AIR 2004 SC 4716; and *Harjinder Kaur*, Supra note 1.

CHAPTER-V

Laws in other Countries

5.1 Most of the nations have enacted laws dealing with DNA profiling within the framework of their constitutional and other legal principles, particularly for dealing with the criminal cases. A mechanism has also been developed to identify the disaster victims through DNA profiling.

A. Argentina

5.2 The National Criminal Procedure Code was amended in 2009 to provide for uniform approach to DNA testing in cases of illegal adoption and falsification of identity under Article 218, empowering Judges to order compulsory DNA testing in certain circumstances. They have established a National Bank of Genetic Data and DNA. The Argentine DNA Law does not leave any option respecting the right wherein any one refuses to DNA testing and prevents the individual from exercising the right to privacy at all. Thus, in the existing legal regime, it is well within the legislative competence of Argentina to legislate in a way that favoured one right-truth-over another right-privacy.⁷⁰

B. United States of America

5.3 The Federal Bureau of Investigation in early 1990's designed the Combined DNA Index System (CODIS) with the purpose of amalgamating forensic sciences and computer technology into an effectual apparatus for solving serious crimes. This has been corroborated by the recent judgment of the US Supreme Court in *Maryland v. King*⁷¹ wherein it was held that when officers making an arrest for a serious offence are authorized to take and analyse a cheek swab of the arrestee's DNA and the same is legitimate under the Fourth Constitutional Amendment. The Court observed:

⁷⁰Prof Elizabeth B. Ludwin King (A Conflict of Interests: Privacy, Truth and Compulsory DNA Testing for Argentina's Children of the Disappeared) 2011

⁷¹ 133 S. Ct. 1958 (2013)

In addition the processing of respondent's DNA sample's 13 CODIS loci did not intrude on respondent's privacy in a way that would make his DNA identification unconstitutional. First, as already noted, the CODIS loci come from non-coding parts of the DNA that do not reveal the genetic traits of the arrestee. While science can always progress further, and those progressions may have Fourth Amendment consequences, alleles at the CODIS loci are not at present revealing information beyond identification.

5.4 In the United States, the type of crimes included in the database varies depending on the State. In some States many types of crimes are included and in others the database is restrictive and contains information pertaining to serious crime only.⁷²

5.5 In *Andrews v. State of Florida*,⁷³ the DNA evidence was accompanied by Andrew's regular fingerprints left on a windowsill, and his identification by the most recent victim in a photo-lineup. In this case, the strong DNA evidence was admitted. In *People of the State of New York v. Joseph CASTRO*,⁷⁴ a three-pronged test was developed to determine whether DNA evidence should be admitted:

- I. Is there a generally accepted theory in the scientific community which supports the conclusion that DNA forensic testing can produce reliable results?
- II. Are there techniques or experiments that currently exist that are capable of producing reliable results in DNA identification, and which are generally accepted in the scientific community?
- III. Did the testing laboratory perform the accepted scientific techniques in analysing the forensic samples in this particular case?

⁷²Data obtained from National Institute of Justice of the United States of America (www/ojp.usdoj.gov/nij).

⁷³ 533 So.2d 841 (1988).

⁷⁴ 143 Misc.2d 276 (1989).

5.6 In *U.S. v. Matthew Sylvester TWO BULLS*,⁷⁵ two additional standards added by the Court of Appeals to make a new five-pronged test:

- I. Whether DNA evidence is generally accepted by the scientific community?
- II. Whether the testing procedures used in this case are generally accepted as reliable if performed properly?
- III. Whether the test was performed properly in this case?
- IV. Whether the evidence is more prejudicial than probative in this case?
- V. Whether the statistics used to determine the probability of someone else having the same genetic characteristics is more probative than prejudicial under Rule 403.

5.7 In the case of *PEOPLE of the State of Illinois v. Reggie E. MILES*,⁷⁶ the evidence included regular fingerprints and semen stains, whose DNA was found to match Miles by scientists at Cellmark Diagnostics, a DNA identification company in Maryland. This case ended with a general strong support for DNA evidence and faith that the techniques can produce reliable results. In *Daubert v. Merrell Dow Pharmaceuticals*,⁷⁷ after analysing the details of the standards of evidence previously set and the Federal Rules of Evidence, the Court put forth 5 criteria to characterize the weight of evidence:

- I. Whether the theory or technique has been tested?
- II. Whether the theory or technique has been subjected to peer review and publication?

⁷⁵ 918 F2d 56.

⁷⁶ 577 N.E.2d 477 (1991).

⁷⁷ 509 U.S. 579 (1993).

- III. Whether the theory or technique has a known or potential rate of error.
- IV. Whether the theory or technique has standards for controlling the technique's operation.
- V. The degree to which the theory or technique has been accepted in the relevant scientific community.

C. Canada

5.8 Canada passed DNA Identification Act on June 30th, 2000 which allowed the establishment of DNA data bank and amended their criminal code. The salient features of the Act are:

1. It empowered the judges with the mechanism to order convicts to provide blood, hair samples which will be added in the bank.
2. The National Data Bank works in accordance with the guidelines of the Act and ensures that the privacy is respected.
3. The samples can be collected only for legal purposes.
4. Collecting genetic sample is legally valid when the sample is collected by health care professional.
5. A National Forensic Science Commission established to make recommendations to the Attorney General to ensure :
 - Appropriate use and dissemination of DNA information.
 - Accuracy, security and confidentiality of DNA information.
 - The timely removal and destruction of obsolete and inaccurate DNA information.
 - Measures are taken to protect privacy.

5.9 In *R. v. Stillman*⁷⁸, the majority view of the Canadian Supreme Court had been that though unauthorised use of a person's body or bodily substances is a "compelled testimony", but if balance of probabilities demonstrate that the evidence would have been discovered by alternative non-destructive means, its admission will not render the trial unfair. In *R. v. S.A.B.*⁷⁹, the Supreme Court of Canada Upheld the

⁷⁸ (1997) 1 SCR 6075

⁷⁹ (2003) 2 SCR 678; see also *Harjinder Kaur*, supra note 1.

Constitutional validity of DNA warrant legislation and dealt with the issue of weight to be attached to the evidence of DNA experts.

D. China

5.10 China, in 1999 passed a law allowing the Ministry of Justice and the Ministry of Interior to establish DNA Banks. The essential things incorporated in this legislation are:

1. The offenders - convicts as well as suspects who are sex offenders have to provide for such samples voluntarily.
2. In case of refusal the prosecutor has the power to compel the person to do so.
3. The written and photographic samples of DNA can be retained for 10 years.
4. People who are suspected of committing a crime for which punishment is more than 5 years are required to give non intimate samples.

E. United Kingdom

5.11 DNA profiling was first used in a criminal case in England in 1986. DNA samples collected from the men living and working within the neighbourhood of two rape and murder scenes resulted in two positive outcomes. The one man initially convicted was proved to be innocent and the guilty criminal was caught, one year later.

5.12 UK has an extensive legal foundation regarding DNA technology. In the UK the question of consent and privacy has been debated and ultimately it was held that the court will not order a blood test to be carried out against the will of a parent. The essence of every law in UK is to protect one's personal liberty. Although there are statutory provisions, where under blood samples can be taken without parent's consent, for example, testing for diseases like HIV.

5.13 In 1994, the British Parliament passed the Criminal Justice and Public Order Act, which provided the legal foundation for the National DNA Database (NDNAD). The Act allows the police to take DNA samples

without consent from anyone charged with any offence that is classified as 'recordable', and also to search the database speculatively for matching profiles. Because of Parliamentary Act, the police is permitted to take DNA's of the arrested person before the investigating process begins so as to make the process faster. The Home office by this step has a complete record of active criminal population, making it easy to first eliminate the innocents.

5.14 The Court of Appeal, in *R (on the application of S) v. Chief Constable of South Yorkshire*⁸⁰, upheld a legislation compelling preservation of finger prints, bodily samples, DNA profiles and DNA samples. It was contended that the amended provision was incompatible with Articles 8 and 14 of the Human Rights Act, which dealt with protection of privacy and hence it was prayed that the fingerprints and DNA samples of the concerned parties should be destroyed. In the said case, a distinction was drawn between the 'taking', 'retention' and 'use' of fingerprints and DNA samples. The statutory basis for the retention of physical samples taken from suspects was addition of new Section 64(1A) of the Police and Criminal Evidence Act, 1984 which provides that these samples could only be used for the purposes relating to the 'prevention or detection of crime, the investigation of an offence or the conduct of a prosecution'. The Court observed:

So far as the prevention and detection of crime is concerned, it is obvious that the larger the data bank of fingerprints and DNA samples available to the police, the greater the value of the data bank will be in preventing crime and detecting those responsible for crime. There can be no doubt that if every member of the public was required to provide fingerprints and a DNA sample this would make a dramatic contribution to the prevention and detection of crime. To take but one example, the great majority of rapists who are not known already to their victim would be able to be identified. However, the 1984 Act does not contain blanket provisions either as to the taking, the retention, or the use of

⁸⁰ (2003) 1 All ER 148,

fingerprints or samples; Parliament has decided upon a balanced approach.

5.15 In *Saunders v. United Kingdom*⁸¹, the court explained the difference between identification and self-incrimination when it comes to collection of DNA samples etc., observing:

“...The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.”

5.16 In the case of *S and Marper v. United Kingdom*,⁸² the court upheld the right to privacy and said that retention of DNA samples is a substantial threat to privacy.

F. Scotland

5.17 Evidential, jurisdictional and procedural matters required amendment in the Criminal Procedure (Scotland) Act 1995 to:

- allow challenges to certain evidence relating to fingerprints and similar data where this is contained in certificate form;
- allow DNA samples to be taken by swabbing by a constable without authorisation from a senior officer;
- allow the police to retain DNA and fingerprints given voluntarily and with the consent of the person giving the sample ;

5.18 Section 55 of the Criminal Procedure (Scotland) Act 1995 is amended to remove the requirement to obtain authorisation from an inspector before a police constable can exercise compulsory powers to take a DNA sample by mouth swab, without force. This is achieved by amending sections 18, 19, 19A and 19B of the 1995 Act which contain

⁸¹ (1997) 23 EHRR 313

⁸² [2008] ECHR 1581.

the statutory powers to obtain samples of DNA for analysis purposes. Section 18 applies where a person has been arrested and is in custody, or has been detained under section 14 of the 1995 Act. Sections 19 and 19A apply where a person has been convicted of an offence, although 19A covers only those offenders convicted of a sexual or violent offence as defined in sub-section (6). Section 19B details circumstances where a constable may use reasonable force while obtaining samples.

5.19 The statutory provision allows the police to use such samples and prints, taken with consent, in the investigation of an offence or offences. This puts on a statutory footing the current practice where the police takes samples or prints with consent and check them against evidence from a scene of crime, for example mass DNA screenings in a geographical area. It also provides the police with authority, in certain circumstances, to retain the samples and prints for use in subsequent investigations whereas presently they would be destroyed at the conclusion of the investigation in connection with which they were obtained.

G. Trinidad and Tobago

5.20 Trinidad and Tobago passed The Deoxyribonucleic Acid (DNA) Identification Act, 2000 to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters. It provided for obtaining DNA samples by consent but also lays down a procedure for obtaining a tissue sample by a Court order. Under this there is also a provision where a child or an incapable person is detained, arrested or charged for an offence, a tissue sample shall not be taken from that child or that incapable person except by an order of a court, because they may not be fit to provide genuine consent.

H. Other Countries

5.21 In countries such as Holland, Germany, France or Austria only individuals who have committed certain serious crimes are included in the DNA profiling.⁸³

5.22 The relevant portion of the Executive Summary of “National DNA Databases 2011⁸⁴” published by Andrew D Thibedeau, J.D., Senior Fellow under the aegis of Council for Responsible Genetics, covering several countries with regard to DNA profiling, including removal criteria and sample retention, is annexed to this Report as Annexure - I.

⁸³Schneider PM. DNA databases for offender identification in Europe - the need for technical, legal and political harmonization. Proceedings of the 2nd European Symposium on Human Identification. Madison, WI, USA: PromegaCorporation,1998.

⁸⁴ Available at www.antoniocasella.eu/dnlaw/DNA-data2011.pdf Last accessed on 13 July 2017

CHAPTER-VI

The Human DNA Profiling Bill, 2016 and Other Reports

A. The Human DNA Profiling Bill 2016

6.1 The Bill 2016 was drafted by the Department of Biotechnology and was submitted to the Government of India. The Bill proposed to form a National DNA Data Bank and a DNA Profiling Board, and for using the data for various purposes specified in the Bill. The proposed DNA Profiling Board would have consisted of molecular biology, human genetics, population biology, bioethics, social sciences, law and criminal justice experts. The Board was to define standards and controls for DNA profiling. It was also to certify laboratories and handle access of data stored by law enforcement agencies. Similar bodies at State levels were also to be formed.

6.2 The National DNA Data Bank, was supposed to collect data from offenders, suspects, missing persons, unidentified dead bodies and volunteers. It was to profile and store DNA data in criminal cases like homicide, sexual assault, adultery and other crimes. The data was to be available also to the accused or the suspect for proving his non-involvement in the crime or at least to establish that he was not present on the place of occurrence at the relevant time.

6.3 The Bill was criticised for not addressing the concerns of privacy by a large number of organisations and public spirited persons on similar grounds and made various representations to the statutory authorities. The Bill did not make special provisions in respect of funding of the Board and how the required funds will be made available to the investigating agencies to collect proper reports of samples. Moreover, the Bill did not specifically provide as to on what stage the samples could be collected.

B. The A. P. Shah Committee Report⁸⁵

6.4 In October 2012, an expert committee headed by Hon'ble Justice Ajit Prakash Shah presented its report, suggesting that there should be safeguards to prevent illegal collection and use of DNA data; further providing safeguards to prevent the proposed body from misusing the same. That there should a mechanism using which citizens can appeal against the retention of data. The report also suggested that there should also be a mechanism of appeal under which citizens under trial can request for a fresh sample to be taken. The samples were to be taken after consent in case of victims and suspects.

6.5 The Committee noted that although the Bill allowed volunteers to give samples, there was no proper procedure to obtain consent and there was no mechanism under which volunteer can withdraw his data. That before giving the data to a third party, the person must be notified and consent must be sought, if the third party was not an authorised agency. The purpose for which data was being collected should be stated publicly, and the data should be destroyed after the purpose has been served and the time frame has expired. The report said that the bodies collecting, analysing, and storing DNA data should be made to release an annual report, detailing their practices and organisational structure. These observations alleviate the underlying concern about one's right to privacy when DNA databases are created.

C. Malimath Committee Report⁸⁶

6.6 Section 293(4) of Cr. P.C. enlists the scientific experts under the Code. The Committee recommended that DNA experts should be included in the list of experts under clause (g).

⁸⁵ "Report of the Group of Experts on Privacy" (Chaired by Justice A P Shah, Former Chief Justice, Delhi High Court), submitted to the Planning Commission on 16 October 2012.

⁸⁶ Malimath Committee Report on Reform of Criminal Justice System, 2003

6.7 It recommended amendment of Cr. P.C. conferring all criminal courts at all levels with the inherent power to pass appropriate orders as maybe necessary to give effect to any order under Cr. P.C., or to prevent abuse of the process of any court or otherwise secure the ends of justice as provided under section 482 Cr. P.C. exclusively for the High Court.

6.8 The Committee also recommended an amendment section 4 of Identification of Prisoners Act, 1920 in line with section 27 of the Prevention of Terrorism Act, 2002 which empowers the Court to direct the accused/suspect in writing to give:

- (1) samples of hand writing, finger-prints, foot-prints, photographs, blood, saliva, semen, hair, voice to the police officer either through a medical practitioner or otherwise, as the case may be.
- (2) If any accused person refuses to give samples as provided in sub-section (1), the Court shall draw adverse inference against the accused.

CHAPTER-VII

Conclusions

7.1 DNA Profiling, an accurate and well established scientific technique is used for disaster victim identification, investigation of crimes, identification of missing persons and human remains, and for medical research purposes.

7.2 Most of the countries have enacted appropriate laws within the framework of their respective constitutions and other legal frameworks for the aforesaid purposes.

7.3 DNA Profiling and use thereof involves various legal and ethical issues and concerns are raised and apprehensions exist in the minds of the common man about its misuse which unless protected may result in disclosure of personal information, such as health related data capable of being misused by persons having prejudicial interests, adversely affecting the privacy of the person.

7.4 Whether in Indian context privacy is an integral part of Article 21 of the Constitution is a matter of academic debate. The issue is pending consideration before the larger bench of the Supreme Court.

7.5 The Bill of 2017 provides provisions intended to protect the right to privacy. The mechanism provided permits for processing of DNA samples only for 13 CODIS loci which would not violate in any way the privacy of a person and as a result will never go beyond identification of a particular person. The strict adherence to 13 CODIS loci will eliminate the apprehension of revealing genetic traits.

7.6 The Code of Criminal procedure (Amendment) Act 2005 which came into force on 23rd June 2006 added Explanations to sections 53, 53A and 54 to clarify the scope of medical examination particularly in respect to the extraction to the bodily substances and the explanation provides that examination of a person shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by scientific techniques including DNA Profiling and such other tests that the medical practitioner deems necessary.

7.7 Thus the Bill of 2017 is in consonance and in conformity with the aforesaid provisions which are added by the Amendment Act 2005, which also provides for DNA profiling.

CHAPTER VIII

Recommendations

8.1 The draft of “The Use and Regulation of DNA-based Technology in Civil and Criminal Proceedings, Identification of Missing Persons and Human Remains Bill, 2016”, which was forwarded to the Law Commission of India by the Department of Biotechnology, has been thoroughly examined by the Commission. The Commission has taken into consideration the various aspects of DNA profiling and the absence of an appropriate regulatory mechanism for the use, retention and expunction of body substances, DNA samples and DNA profiles. The draft Bill has been substantially modified and a new draft Bill titled “The DNA-Based Technology (Use and Regulation) Bill, 2017” has been prepared and is annexed to this Report as Annexure – II.

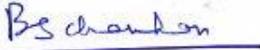
8.2 The salient features of the recommendations are as below:

- (a) **DNA Profiling Board – A statutory body**: A DNA Profiling Board be constituted, which would undertake functions such as laying down procedures and standards to establish DNA laboratories and granting accreditation to such laboratories; and advising the concerned Ministries / Departments of the Central and State Governments on issues relating to DNA laboratories. The Board shall also be responsible to supervise, monitor, inspect and assess the laboratories. The Board will frame guidelines for training of the Police and other investigating agencies dealing with DNA related matters. Advising on all ethical and human rights issues relating to DNA testing in consonance with international guidelines will be another function of the Board. It will recommend research and development activities in DNA testing and related issues, etc.

- (b) DNA profiling would be undertaken exclusively for identification of a person and would not be used to extract any other information.
- (c) DNA Data Bank: There shall be a National DNA Data Bank, and Regional DNA Data Banks for the States, to be established by the Central Government. The Data Banks will be responsible for storing DNA profiles received from the accredited laboratories and maintaining certain indices for various categories of data, like crime scene index, suspects' index, offenders' index, missing persons' index and unknown deceased persons' index.
- (d) With a view to assist the kith and kin of missing persons, provisions have been made for proper identification of missing persons on the basis of their bodily samples/substances.
- (e) Appropriate regulations may be notified by the Board for entry, retention and expunction of DNA profiles.
- (f) Maintenance of strict confidentiality with regard to keeping of records of DNA profiles and their use.
- (g) Sharing of DNA profiles with and by foreign Government or Government organisation or Government institutions or any of its agencies, for the purpose of this Act.
- (h) The violators of the provisions would be liable for punishment of imprisonment, which may extend up to three years and also fine which may extend up to Rs.2 lakhs.
- (i) The undertrial may request the trial court for another DNA testing if s/he satisfies the court that the previous DNA sample(s)/bodily substance(s) stood contaminated and hence could not be relied upon.
- (j) The DNA experts may be specified as Government Scientific Experts and be notified as such under clause (g) of sub-section (4) of section 293 of Cr. P.C.

8.3 The draft Bill is prepared to fulfill the very objective of human DNA profiling by DNA laboratories which will be under statutory obligations to follow stringent standards, quality control and quality assurances. This will promote the establishment of uniform practices to be followed in all the laboratories involved in DNA profiling. The proposed legislation will promote the scientific upgradation and streamlining of DNA profiling activities in the country. The Commission has put in its efforts to ensure that the provisions in the draft Bill are in conformity with the constitutional provisions.

The Commission recommends accordingly.


[Dr. Justice B.S. Chauhan]
Chairman

[Justice Ravi R. Tripathi] [Prof. (Dr.) S. Sivakumar] [Dr. Sanjay Singh]
Member Member Member-Secretary

[Suresh Chandra] [Dr. G. Narayana Raju]
Ex-officio Member Ex-officio Member

Annexure I

Relevant Portion from “National DNA Databases 2011”

| Country | Entry Criteria | Removal Criteria | Sample Retention |
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| Austria | Convicted persons, suspects charged of a serious offences and all crime scene stains. | Profiles of convicted persons are retained indefinitely, suspects' profiles are removed upon acquittal, [but only after submitting a written request], and crime scene stains are kept until a case is solved. | Convicted persons' samples must be destroyed when individual reaches age eighty, suspects samples are retained despite suspects' acquittal, [a written request for destruction must be submitted] |
| Belgium | Persons convicted of a “serious offence” and crime scene stains when ordered by a prosecutor | Convicted persons' profiles are kept for 10 years after their death and crime scene stains are removed when no longer considered useful (order of public prosecution office is necessary) | Convicted persons' samples must be destroyed once DNA profile is created, suspects' profiles must be destroyed once the prosecutor has determined that a suspects' request for independent DNA analysis will not be granted or when the result of such request has been communicated to the suspect. |
| Bulgaria | Persons indicted for a premeditated indictable crime | As to personal data registered for purposes of national security or crime prevention, it must be erased if there is no more reason for maintain them under the Act or pursuant to and act. In determining whether to delete said personal data including DNA profiles, the Ministry of Interior must consider the age of the individual, need of the information, completion of an ongoing investigation or legal process, whether the individual has been convicted, amnesty status, implications of rehabilitation, or the expiration of a term provided by law. As to personal data registered for crime prevention purposes only, it must be deleted upon written order of the | |

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| | | Data Commissioner or upon a written request of the individual in question if it was registered unlawfully, the underlying criminal proceedings have been terminated, the individual in question is acquitted of all charges, the individual in question is except by reason of incapacity, the individual is deceased. | |
| China (Hong Kong) | Persons convicted of any “serious arrestable offence” and all crime scene stains. | Convicted persons’ profiles are kept indefinitely unless their conviction is subsequently quashed on appeal, in which case they are removed from the database. | Convicted persons’ samples must be destroyed as soon as is practicable from such time as there is no other charge against the person in relation to an offence which renders the retention of the sample necessary and all proceedings (including any appeal) arising out of the conviction have been concluded; suspects samples’ must be destroyed as soon as is practicable twelve months after the sample is taken if they are not charged with any offence, or if so charged when all charges are withdrawn, the person is discharged by a court before conviction of the offence or all the offences, or they are acquitted of all charges. |
| Croatia | Any person whose identity is in question in the course of a criminal investigation and all crime scene stains | Convicted persons’ profiles are kept for twenty years after the completion of the underlying criminal proceeding. | |
| Cyprus | All convicted persons, suspects, and crime scene stains | Convicted persons’ profiles are removed when their record is cleared, suspects’ profiles are removed when they are acquitted or otherwise cleared of all charges, and crime scene stains are kept until they | All samples follow fate of DNA profile |

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| | | are identified. | |
| Czech Republic | All convicted persons and crime scene stains | Convicted persons' profiles are kept for eighty years after they are entered and crime scene stains are kept until they are identified | All samples follow fate of DNA profile |
| Denmark | Convicted persons, suspects charged of an offence that could lead to a prison sentence of 1 ½ years or more, and all crime scene stains | Convicted persons' and suspects' profiles are kept until two years after their death or upon their reaching age eighty and crime scene stains are retained for the "prescribed term" of the case as determined by the Danish Penalty Act | All samples follow fate of DNA profile. |
| Estonia | Persons convicted or arrested for any recordable offence and all crime scene stains. | Convicted persons' and suspects' profiles are kept for ten years after their death and crime scene stains are kept for seventy-five years after they are entered. | All samples are retained indefinitely. |
| Finland | Convicted persons serving a prison sentence of 3 years or more, suspects charged of a crime that could lead to a prison sentence of 6 months or more, and all crime scene stains | Convicted persons' profiles are kept for ten years after the death of the convicted person, suspects' profiles are deleted within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed when their sentence has been nullified, or ten years after the suspects' death if not removed earlier; crime scene stains are kept indefinitely | Convicted persons' samples must be destroyed ten years after their death, suspects' samples must be destroyed within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed, when their sentence has been nullified, or ten years after the suspects' death if not removed earlier. |
| France | Persons convicted of or charged with a serious offence (list in law) and crime scene stains when deemed relevant | Convicted persons' profiles are kept for forty years after conviction upon their eightieth birthday, suspects' profiles are removed by motion of the prosecutor or the individual upon grounds that their storage no longer serves its original purpose, and crime scene stains are deleted forty years after they have been analysed. | Convicted persons' samples are retained for forty years after their conviction or until their eightieth birthday; suspects' samples are kept until conviction or acquittal: i.e., procedurally, DNA samples are treated as regular evidence. |
| Germany | Persons convicted of a serious offence or repeatedly | Convicted persons' and suspects' profiles are removed when their retention is no longer | Convicted persons' and suspects' samples must be destroyed when they are no longer considered |

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| | committing the same minor offence, suspects charged of a serious offence, and crime scene stains when related to any recordable offence | necessary and crime scene stains must be deleted after 30 years of their entry. | useful for investigatory purposes. |
| Hungary | Persons convicted of one of the crimes categories which are listed in law, suspects charged with an offence that could lead to a prison sentence of 5 years or more or that is listed in law, and all crime scene stains. | Convicted persons' profiles are kept until twenty years after conviction, suspects' profiles are retained until the underlying proceeding is abandoned or the individual is acquitted, and crime scene stains are deleted at the time proscribed by law. | Convicted persons samples must be destroyed twenty years after their conviction and suspects' samples must be destroyed upon their acquittal or abandonment of the underlying investigation or proceeding |
| Latvia | Convicted or suspected of any recordable offence and all crime scene stains | Convicted persons' and suspects' profiles are retained for seventy five years after their entry and crime scene samples are kept until they are identified | All samples are kept for seventy five years |
| Lithuania | All convicted persons, suspects, and crime scene stains | Convicted persons' and suspects' profiles are retained for one hundred years after their entry or ten years after their death and crime scene stains are kept indefinitely | All samples must be destroyed once they have been analysed and a DNA profile derived therefrom |
| Luxembourg | Persons convicted of an offence that is listed in law (order of solicitor or examining magistrate is required), persons suspected of any recordable offence (order of solicitor or examining magistrate is required) and crime scene stains only by order of the solicitor, the examining magistrate or a judicial police officer acting by | Convicted persons' profiles are kept for ten years after their death, suspects' profiles are deleted upon their acquittal or ten years after their death, and crime scene stains are retained for thirty years after their entry | Convicted persons' samples are destroyed ten years after their death; suspects' samples are destroyed upon acquittal, ten years after their death, or upon the expiration of the a term proscribed by law |

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| | order of one these magistrates | | |
| Netherlands | Persons convicted or suspected of any recordable offence and all crime scene stains | Convicted persons' profiles are kept for one hundred years after the individual's date of birth, suspects' profiles are removed upon their acquittal, and crime scene stains are removed when no longer considered useful | Convicted persons' samples are retained indefinitely; suspects samples must be destroyed upon their acquittal |
| Slovakia | Persons condemned to punishment other than a fine, all suspects, if warranted by possible prison sentence, and all crime scene stains | Convicted persons' profiles are retained for ten years after conviction, suspects' profiles are removed upon their acquittal, and crime scene stains are kept until they are identified, when the underlying case is solved, or after fifteen or thirty years depending on the severity of the underlying offense | All samples must be destroyed "as soon as possible" [GET QT FROM LAW] |
| Sweden | Persons serving a prison sentence of 4 years or more, suspects charged of an offence that could lead to a prison sentence of 4 years or more (approval of prosecutor is required), and all crime scene stains | Convicted persons' profiles are kept for twenty years after their entry for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' profiles are removed upon acquittal and crime scene stains are deleted after twelve, twenty, or eighty years depending on the severity of the underlying offense | Have to be destroyed twenty years after their creation for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' samples must be destroyed upon their acquittal |
| UK | Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains For Scotland: Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains | Convicted persons' and suspects' profiles are retained indefinitely and crime scene stains are kept until they have been identified For Scotland: Convicted persons' profiles are retained indefinitely, suspects' profiles are retained until the underlying proceeding is abandon or the individual is acquitted, and crime scene stains are kept until | All samples are retained indefinitely For Scotland: Convicted persons' samples are retained indefinitely, but suspects' samples must be destroyed upon their acquittal or when no criminal proceedings are initiated |

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| United States | 12 states have laws authorizing arrestee sampling. All 50 states require that convicted sex offenders provide a DNA sample; 46 states require that all convicted felons provide a DNA sample. Eleven states specify certain misdemeanour among those who must provide a sample. There are 28 states that include DNA from delinquent juveniles in the database. | they have been identified 38 states contains statutes that detail expungement criteria and procedure. 33 require the offender to initiate the process. | The criteria for retention vary from immediate removal, if a sample is not used, to retention of a sample for at least 35 years, to permanent retention for certain specified offences. |
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Laws on Point

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| Australia | Commonwealth Crimes Act of 1914 (as amended up to July 2008) The Crimes (Forensic Procedures) Act of 2000 No 59 (NSW) The Criminal Law (Forensic Procedures) Act 2007 (SA) |
| Austria | State Police Law (SPG) |
| Bahrain | Law No. 45 of 2006 (“Identity Card Law”) Law No. 46 of 2006 |
| Belarus | Minister of Justice Order No. 471 of December 5, 2008 Ministry of Justice Resolution No. 20 of July 21, 2003 |
| Belgium | Law of 22 March 1999 Royal Decree of 4 February 2002. |
| Bulgaria | Instruction I-73/2000 Ordinance on Police Records Law for the Ministry of the Interior Criminal Procedure Code |
| Canada | DNA Identification Act of 1998 |
| China (Hong Kong) | The Dangerous Drugs, Independent Commission Against Corruption and Police Force Ordinance Independent Commission Against Corruption Ordinance Police Force Ordinance |
| Colombia | Code of Criminal Procedure Decision C-025, 2009 of the Colombian Constitutional Court |
| Croatia | Police Act Code of Criminal Procedure Rules on Police Conduct Law on Prisons |
| Cyprus | Police Law |
| Czech Republic | Criminal Procedure Act Law on Police Binding Instruction No. 88/2002 of the President of the Police |
| Denmark | Law Establishing a Central DNA Profile Register |
| Estonia | Government of the Republic Act Databases Act, Police Act Personal Data Protection Act Code of Criminal Procedure Decree of National Police Commissioner |
| Finland | Coercive Measures Act Police Act Police Personal Data File Act |
| France | Code of Criminal Procedure Law No. 98-468 of June 17, 1998 Law No. 2001-1062 of November 15, 2001 Law No. 2003-239 of March 18, 2003 Decree No. 2000-413 of May 18, 2000 Decree No. 2002-697 of April 30, 2002 Decree No. 2004-470 of May 25, 2004 Decree No. 2004-71 of May 25, 2004 Decree No. 2009-785 of June 23, 2009. Deliberation No. 2008-113 of May 14, 2008 Circular of the Ministry of Justice of 27 July 2004 |

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| FYR Macedonia | Rules of Legal Procedure (Strafprozessordnung) Bundeskriminalamtgesetz (act for the Federal Criminal Investigation Office) |
| Germany | Act LXXXV of 1999 on the Criminal Records and Certificates on Criminal Record. |
| Hungary | Law on Police DNA File Police DNA File Regulations |
| Iran | 2005 Amendment to the Criminal Procedure Law |
| Jamaica | DNA Handling and Recording Regulations Police Instructions on DNA |
| Kuwait | Law on Establishing the National DNA Database |
| Latvia | Criminal Procedure Code of the Republic of Lithuania Lithuanian Police Activity Law. Instructions on DNA Database Management, Order of the General Commissar of the Lithuanian Police |
| Lithuania | Law No. 163 of August 25, 2006 on the Procedures for Identification by DNA Fingerprints in Criminal Cases |
| Luxembourg | The Deoxyribonucleic Acid (DNA) Identification Act of 2009 |
| Morocco | Code of Criminal Procedure DNA-investigation in Criminal Proceedings Act |
| New Zealand | Criminal Procedures Act Law Regulating the Prosecuting Authority |
| Norway | Law No. 80 of 23 November 1998 |
| Panama | Code of Criminal Procedure Police Act |
| Poland | Law No. 5 of February 12, 2008 |
| Portugal | Law No 76/2008 establishes the National System of Judicial Genetic Data (hereinafter “SNDGJ”). |

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| Singapore | Criminal Law (Temporary Provisions) Act Registration of Criminals Act |
| Slovakia | The Act n. 417/2002 -Use of DNA analysis for identification of persons |
| Slovenia | Police Act Code of Criminal Procedure |
| South Africa | Criminal Procedure Act |
| Spain | Criminal Procedure Law Law 15/1999 on Protection of Personal Data |
| Sweden | Code of Judicial Procedure Police Data Act |
| Switzerland | DNA-Profil-Gesetz DNA-Profil-Verordnung DNA-Analyselabor-Verordnung |
| UK | Police and Criminal Evidence Act (PACE) Criminal Justice and Public Order Act (CJPOA) Criminal Evidence (Amendment) Act Criminal Justice and Police Act (CJPA) Criminal Justice Act (CJA) 2003 Data Protection Act (DPA) Human Rights Act (HRA) |
| Ukraine | Approved Regulations on the Operation of the Ministry of Internal Affairs Criminal Records Services |
| United States | The DNA Identification Act, 1994 Justice for All Act, 2004 Violence Against Women Act, 2005 |

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| | <p align="center">THE DNA BASED TECHNOLOGY (USE AND REGULATION) BILL, 2017</p> <p>A BILL to provide for the use and regulation of Deoxyribonucleic Acid (DNA) based technology; taking of specified bodily samples from certain categories of persons for the purposes of DNA analysis, custody trail from collection to reporting; to provide for the use of DNA profiles in the investigation of crime and the use of such profiles in proving the innocence or guilt of persons; to establish and regulate the administration of the DNA Profiling Board; laying down the standards for laboratories; to establish National and Regional DNA Data Banks for the maintenance of national DNA database for the purposes of identification of victims, accused, suspects, undertrials, missing persons and unidentified human remains; to provide for the conditions under which the samples for DNA profiles derived from the samples may be retained for the periods or within which they must be destroyed; and for matters connected therewith or incidental thereto.</p> <p align="center">BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:-</p> <p align="center">CHAPTER I PRELIMINARY</p> <p>1 (1) This Act may be called the DNA Based Technology (Use and Regulation) Act, 2017. (2) It extends to the whole of India. (3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p> <p>2 (1) In this Act, unless the context otherwise requires,- (a) "Board" means the DNA Profiling Board established under sub-section (1) of section 3; (b) "bodily substances" means any biological material of, or from the body of, a person,</p> | <p>Short title, extent and commencement.</p> <p>Definitions.</p> |
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| | <p>whether living or dead, unidentified human remains, and includes intimate or non-intimate body samples specified in Explanation to section 23;</p> <p>(c) “Chairperson” means the Chairperson of the Board ;</p> <p>(d) “crime scene index” in relation to any offence listed in Paragraphs A and B of the Schedule means a list of entries of DNA profiles, in a DNA Data Bank derived from bodily substances found—</p> <p>(i) at any place where an offence was committed or is reasonably suspected of having been committed; or</p> <p>(ii) on or within the body of the victim, or a person reasonably suspected of being a victim, of an offence; or</p> <p>(iii) on anything worn or carried by the victim at the time when an offence was, or is reasonably suspected of having been, committed; or</p> <p>(iv) on or within the body of a person, or on anything, or at any place, associated with the commission of an offence;</p> <p>(e) “DNA Data Bank” means a DNA Data Bank established under sub-section(1) of section 25;</p> <p>(f) “DNA Data Bank Director” means a person appointed under sub-section (1) of section 27;</p> <p>(g) “DNA laboratory” means any laboratory or facility established by the Central Government or a State Government or a person or an organization which has been granted accreditation under this Act to perform DNA testing;</p> <p>(h) “DNA profile” means the result of analysis of a DNA sample for establishing human identification in respect of matters listed in the Schedule;</p> <p>(i) “DNA sample” means bodily substances of any nature collected for conducting DNA testing and includes the materials derived in a DNA laboratory from such bodily substances;</p> <p>(j) “DNA testing” means the procedure followed in DNA laboratory to develop DNA profile;</p> <p>(k) “Fund” means Fund of the Board constituted under sub-section (1) of section 40;</p> <p>(l) “known sample” means the bodily substances</p> | |
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| | <p>of a person whose identity is established;</p> <p>(m) “medical practitioner” means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register;</p> <p>(n) “Member” means a Member of the Board and includes the Chairperson;</p> <p>(o) “Member-Secretary” means the Member-Secretary of the Board;</p> <p>(p) “missing persons’ index” means a list of entries of DNA profiles, in a DNA Data Bank, derived from —</p> <ul style="list-style-type: none"> (i) Unidentified human remains; (ii) the personal effects of persons who are missing; and (iii) the bodily substances of relatives of the missing persons; <p>(q) “offenders’ index” means a list of entries of DNA profiles of samples taken from offenders, in a DNA Data Bank;</p> <p>(r) “prescribed” means prescribed by rules made by the Central Government under this Act;</p> <p>(s) “proficiency testing” means a quality assurance measure used to monitor performance and identify areas in which improvement may be needed and includes—</p> <ul style="list-style-type: none"> (i) internal proficiency test which is devised and administered by the DNA laboratory; and (ii) external proficiency test, which may be open or blind, and which is devised and administered by an external agency; <p>(t) “quality assurance” includes the systematic actions necessary to demonstrate that a product or service meets specified standards of quality;</p> <p>(u) “quality manual” is a document which specifies the quality procedures, quality systems and practices of an organisation relating to standards, quality control and quality assurance;</p> <p>(v) “quality system” is the organisational structure, responsibilities, procedure, process and resources for implementing quality management;</p> | <p>102 of 1956.</p> |
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| | <p>(w) “regulations” means the regulations made by the Board;</p> <p>(x) “specified offence” means any offence punishable with death or imprisonment for a term exceeding seven years;</p> <p>(y) “suspects’ index or undertrials’ index” means a list of entries of DNA profiles derived from bodily substances taken from the suspects or as the case may be undertrials, in a DNA Data Bank;</p> <p>(z) “unknown deceased persons’ index” means a list of entries of DNA profiles derived from bodily substances or remains of deceased persons whose identity is not known, maintained in a DNA Data Bank;</p> <p>(zz) “validation process” means the process by which a procedure is evaluated to determine its efficacy and reliability for casework analysis and includes—</p> <p>(i) developmental validation, being the acquisition of test data and determination of conditions and limitations, of any new DNA methodology for use on case samples; and</p> <p>(ii) internal validation, being an accumulation of test data within the DNA laboratory, to demonstrate that the established methods and procedures are performed as specified in the laboratory.</p> <p>(2) All words and expressions used and not defined in this Act but defined in the Indian Penal Code, 1860; the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973, shall have the same meanings respectively assigned to them in that Act and those Codes.</p> <p style="text-align: center;">CHAPTER II DNA PROFILING BOARD</p> <p>3 (1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be established, for the purposes of this Act, a Board to be called the DNA Profiling Board.</p> <p>(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a</p> | <p>45 of 1860. 1 of 1872. 2 of 1974.</p> <p>Establishment of DNA Profiling Board.</p> |
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| | <p>common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.</p> <p>(3) The head office of the Board shall be at such place as may be determined by the Central Government.</p> <p>(4) The Board may establish regional offices at such other places as it may deem necessary.</p> <p>4. (1) The Board shall consist of eleven members including the Chairperson and Member-Secretary.</p> <p>(2) The Chairperson shall either be the Secretary to the Government of India in the Department of Biotechnology provided he has knowledge and experience in biological sciences or any eminent person from the field of biological sciences having experience of not less than twenty-five years in that field, to be appointed by the Central Government.</p> <p>(3) The Board shall consist of the following, ex-officio, members:-</p> <ul style="list-style-type: none"> (a) a person nominated by the Chairperson of the National Human Rights Commission, from amongst its members; (b) the Director General, National Investigation Agency or Director, Central Bureau of Investigation or their nominee not below the Joint Director, to be nominated by rotation; (c) the Director General of Police of States to be nominated by the Central Government by rotation in alphabetical order; (d) the Director, Centre for DNA Fingerprinting and Diagnostics, Hyderabad, to be nominated by the Central Government; (e) the Director, National Accreditation Board for Testing and Calibration of Laboratories, New Delhi, to be nominated by the Central Government; (f) the Director of a Central Forensic Science Laboratory to be nominated by the Central Government; (g) an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Law and Justice, to be nominated by the Law Secretary; | <p>Composition of the Board.</p> |
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| | <p>(h) one representative not below the rank of Joint Secretary to the Government of India to represent the Department of Biotechnology, Union Ministry of Science and Technology to be nominated by its Secretary.</p> <p>(4) One person, from amongst persons of eminence in the field of biological sciences having experience of not less than twenty five years in that field to be appointed by the Central Government, as a Member.</p> <p>(5) An officer, not below the rank of Joint Secretary to the Government of India or equivalent, with knowledge and experience in biological sciences shall be nominated by the Central Government, as Member- Secretary of the Board.</p> <p>5. (1) The Chairperson shall,-</p> <p>(a) if he holds the post of Secretary to the Government of India, hold the office in the Board till he remains Secretary in the department or attains the age of superannuation, whichever is earlier;</p> <p>(b) if he is appointed from amongst persons of eminence in the field of biological sciences, hold the office in the Board for a period of five years or till he attains the age of sixty-five years, whichever is earlier.</p> <p>(2) The term of office of ex-officio members nominated under clauses (a), (b), (c), (f), (g), and (h) of sub-section (3) of section 4 shall be for a period not exceeding three years and the Members nominated under clauses (d) and (e) thereof, shall continue as Members till they hold their respective posts.</p> <p>(3) The term of office of expert Member appointed under sub-section (4) of section 4 shall be three years from the date on which he enters upon his office or attains the age of sixty-five years, whichever is earlier.</p> <p>(4) The person other than the Secretary to the Government of India appointed as Chairperson and the Member appointed under sub-section (4) of section 4 shall be entitled to such pay and allowances as may be prescribed.</p> <p>(5) The Member appointed under sub-section (4) of</p> | <p>Term of office, conditions of service of Chairperson and other Members.</p> |
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| | <p>section 4 may be re-appointed for not more than one term.</p> <p>6. (1) The Board shall meet at such time and place and shall observe such rules of procedure with regard to the transaction of its business in the meetings including the quorum at such meetings, as may be specified by regulations.</p> <p>(2) The Chairperson shall preside over the meetings of the Board and if, for any reason, he is unable to attend a meeting, the senior-most Member of the Board present, reckoned from the date of his appointment to the Board, shall preside at such meeting:</p> <p>Provided that in case of common date of appointment of Members, the Member senior in age shall be considered as senior to the other Members.</p> <p>(3) All questions which come up before any meeting of the Board shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or, in his absence, the person presiding over the meeting shall have a second or casting vote.</p> <p>(4) The Board shall function under the guidance and supervision of the Chairperson.</p> <p>(5) All orders and decisions of the Board shall be authenticated by the Member-Secretary.</p> <p>7. A Member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Board shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting, which shall be recorded in the proceedings of the Board, and such Member shall not participate in the meeting when that matter is being considered.</p> <p>8. (1) The Central Government may remove from office the Chairperson or any Member, who—</p> <p>(a) has been adjudged as an insolvent;</p> <p>(b) has been convicted of an offence involving moral turpitude;</p> <p>(c) has become physically or mentally incapable</p> | <p>Meetings of Board.</p> <p>Member not to participate in meetings in certain cases.</p> <p>Removal and resignation of Chairperson or Member and filing up of casual vacancies of Board.</p> |
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| | <p>of acting as a Member;</p> <p>(d) has acquired such financial or other interest as is likely to affect adversely his functions as a Member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest:</p> <p>Provided that the Chairperson or a Member shall not be removed from office on the grounds specified under clause (d) or clause (e) except by an order made by the Central Government after an inquiry made in this behalf in which the Chairperson or such Member has been given a reasonable opportunity of being heard in the matter.</p> <p>(2) If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or the Member appointed under sub-sections (2) and (4) of section 4, the Central Government shall appoint another person to fill such vacancy for the remaining period in accordance with the provisions of this Act.</p> <p>(3) The Chairperson or the Member appointed under sub-sections (2) and (4) of section 4 may, by a notice of not less than thirty days in writing under his hand, addressed to the Central Government, resign from his office and the vacancy so caused shall be filled for the remaining period from the same category of persons by the Central Government:</p> <p>Provided that the Chairperson or the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, must continue to hold office until the expiry of three months from the date of receipt of such notice or until a person is duly appointed in his place or till the expiry of his term of office, whichever is earlier.</p> <p>9. No act or proceedings of the Board shall be invalid merely by reason of—</p> <p>(a) any vacancy in, or any defect in the constitution of the Board; or</p> <p>(b) any defect in the appointment of a person acting as a Member of the Board; or</p> <p>(c) any irregularity in the procedure of the Board</p> | <p>Vacancies not to invalidate proceedings of Board.</p> |
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| | <p style="text-align: center;">not affecting the merits of the case.</p> <p>10. The Board may, by general or special order in writing, delegate to the Chairperson or any Member or Member-Secretary, subject to such conditions, if any, as may be specified in the order, its functions under this Act (except the power to make regulations under section 58), as it may deem necessary.</p> <p>11. (1) The Board may, with the approval of the Central Government, appoint such officers and other employees, as it considers necessary, for the efficient discharge of its functions under this Act.</p> <p>(2) The salaries and allowances payable to, and the terms and other conditions of service of the officers and employees appointed under sub-section (1) shall be such as may be prescribed.</p> <p>12. The Board shall for the purposes of this Act, perform the following functions, namely :-</p> <p>(a) advising concerned Departments and Ministries of the Central Government and the State Governments on all issues relating to DNA laboratories including planning, organisational structure, size, number, strategic location and operating standards; establishment and management of new DNA laboratories; upgradation of existing DNA laboratories; and making recommendations on funds required for such purposes;</p> <p>(b) facilitating and assisting the Central Government in establishing DNA Data Banks;</p> <p>(c) laying down guidelines, standards and procedures for establishment and functioning of DNA laboratories and DNA Data Banks including manpower, infrastructure and other related issues concerning monitoring of their performance and activities;</p> <p>(d) giving approval and issuing certificate of accreditation to the DNA laboratories, its renewal and cancellation thereof;</p> <p>(e) supervising, monitoring, inspection and assessment of DNA laboratories and DNA Data Banks,</p> | <p>Delegation of powers of Board.</p> <p>Officers and other employees of Board</p> <p>Functions of Board.</p> |
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| | <p>including quality control;</p> <ul style="list-style-type: none"> (f) development of training modules and framing guidelines for training of manpower including the police and investigating agencies dealing with DNA related matters; (g) conducting, monitoring, regulating, certifying and auditing of DNA training programmes for DNA laboratories and DNA Data Banks; (h) identifying scientific advances and recommending research and development activities in DNA testing and related issues including intellectual property issues; (i) laying down procedures for communication of information relating to DNA profile in civil and criminal proceedings and for investigation of crimes by law enforcement and other investigating agencies; (j) recommending methods for optimum use of DNA techniques and technologies for administration of justice or for such other relevant purposes as may be specified by regulations; (k) disseminating best practices concerning the collection and analysis of DNA sample so as to ensure quality and consistency in the use of DNA techniques; (l) advising on all such matters, under this Act, as may be referred to it by the Central Government or the State Government; (m) making recommendations for provision of privacy protection laws, regulations and practices relating to the access to, or the use of, stored DNA samples and their analyses, and ensure — <ul style="list-style-type: none"> (i) implementation and sufficiency of such protection; (ii) appropriate use and dissemination of DNA information; (iii) accuracy, security and confidentiality of DNA information; (iv) timely removal and destruction of obsolete, expunged or inaccurate DNA information; and | |
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| | <p>(v) such other steps as may be required to protect privacy;</p> <p>(n) providing a forum for the exchange and dissemination of ideas and information on DNA based technology;</p> <p>(o) sensitising and creating awareness among public and other stakeholders including police officers, prosecutors and judicial officers on use and regulation of DNA based technology;</p> <p>(p) deliberating and advising on all ethical and human rights issues relating to DNA testing in consonance with international guidelines enumerated by the United Nations Organisation and its specialised agencies, <i>inter alia</i>, relating to-</p> <p>(i) the rights and privacy of citizens;</p> <p>(ii) the issues concerning civil liberties;</p> <p>(iii) issues having ethical and other social implications in adoption of DNA testing technology; and</p> <p>(iv) professional ethics in DNA testing;</p> <p>(q) establishing procedure for co-operation in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution;</p> <p>(r) identifying and elaborating procedure for inter-State co-operation in dealing with DNA testing;</p> <p>(s) advising the Central Government on any modifications required to be made in the lists contained in the Schedule;</p> <p>(t) framing guidelines for storage and destruction of bodily substances including known sample;</p> <p>(u) undertaking any other activity which in the opinion of the Board advances the purposes of this Act; and</p> <p>(v) performing such other functions as may be assigned to it by the Central Government, from time to time.</p> | |
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CHAPTER III

ACCREDITATION OF DNA LABORATORIES

13. (1) No laboratory shall undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto under this Act without obtaining accreditation from the Board.

(2) A laboratory seeking accreditation for one or more fields of accreditation or seeks to add a field of accreditation shall apply to the Board for accreditation in writing in such form and manner along with such fees and supporting documents as may be specified.

(3) Every laboratory functioning as on the date of commencement of this Act, shall, before expiry of a period of sixty days from the date of commencement of this Act, make an application, as provided in subsection(2), to the Board for obtaining accreditation which shall be decided by the Board within thirty days from the receipt of the application:

Provided that such laboratory may after making an application, continue to undertake DNA testing or any other procedure relating thereto, for a period of three months.

(4) A laboratory seeking accreditation shall comply with onsite assessment requirements, specified standards and such other requirements as may be specified.

(5) The applications for accreditation renewal shall be made to the Board at least sixty days prior to the expiration date of the current certificate of accreditation in the specified manner along with fees.

(6) Any failure to submit an application for renewal in accordance with this section shall result in a lapse of accreditation, if the Board has not approved the renewal application prior to the expiration of the current certificate of accreditation.

14. The Board may, upon the receipt of application for accreditation or renewal thereof, and after carrying out inspection of the laboratory, its records and books, and on being satisfied that it fulfils all requirements under this Act, may, by order, grant accreditation to such laboratory for a period of two years or renew it for the

Application for obtaining accreditation and renewal thereof.

Granting of accreditation or renewal thereof.

other authority as that Government may, by notification, specify within a period of sixty days from the date of such order, which shall be decided by the Central Government or the authority, as the case may be, within a period of sixty days.

CHAPTER IV

STANDARDS, QUALITY CONTROL , INFRASTRUCTURE OF DNA LABORATORY AND TRAINING OF ITS PERSONNEL

17. (1) Every DNA laboratory which has been granted approval for undertaking DNA testing or any other procedure under this Act shall—

- (a) follow such standards and procedures for quality assurance for collection, storage, testing and analysis of DNA sample;
- (b) establish and maintain such documentation, quality system;
- (c) prepare and maintain quality manuals containing such details;
- (d) share DNA data prepared and maintained by it with the National DNA Data Bank and the Regional DNA Data Bank in such manner,

as may be specified by regulations.

(2) The DNA laboratory shall report the results of the DNA testing in conformity with the provisions of this Act.

18. Every DNA laboratory shall,-

- (a) appoint a person in charge of the laboratory, who possesses such educational qualifications, experience and other eligibility criteria;
- (b) employ such scientific and technical staff, possessing such educational qualifications and experience; and
- (c) other staff and employees who shall possess such qualifications and experience,

for discharging duties and performing functions under this Act, as may be specified by regulations.

Obligations of DNA laboratory.

Qualifications and experience of person in-charge, scientific and technical staff and other employees of DNA laboratory.

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| | <p>19.(1) The person in charge of every DNA laboratory shall take such measures for facilitating skill upgradation and advancement in the knowledge of its employees in the field of DNA testing and other related fields, as may be specified by regulations.</p> <p>(2) The person in charge of every DNA laboratory shall ensure that its employees undergo regular training in DNA related subjects, in such institutions, level and intervals, as may be specified by regulations.</p> <p>(3) The person in charge of every DNA laboratory shall maintain such records relating to the laboratory and its personnel as may be specified by regulations.</p> <p>20. (1) Every DNA laboratory shall,-</p> <ul style="list-style-type: none"> (a) possess such infrastructure; (b) maintain such security and follow such procedure to avoid contamination of DNA samples; (c) establish and follow such documented evidence control system to ensure integrity of physical evidence; (d) establish and follow such validation process and written analytical procedure; (e) prepare such indices; (f) use such equipment for the methods it employs; (g) have such documented programme for calibration of instruments and equipment; (h) conduct annual quality audits with such standards; (i) install such security system for the safety of DNA laboratory and its personnel; (j) charge such fees for conducting DNA testing or any other procedure relating thereto, not exceeding twenty-five thousand rupees; <p>as may be, prescribed by regulations.</p> <p>(2) The DNA laboratory shall, after deriving the DNA profile, and depositing it with the DNA Data Bank, return the biological sample or remaining material for its preservation to the investigating officer in a criminal case till the disposal of the case or the order of the court and</p> | <p>Responsibilities of person in charge of DNA laboratory.</p> <p>Measures to be taken by DNA laboratory.</p> |
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| | <p>in all other cases it shall be destroyed with an intimation to the person concerned.</p> <p><i>Explanation:</i> For the purposes of this section,-</p> <p>(a) “analytical procedure” means an orderly step by step procedure designed to ensure operational uniformity;</p> <p>(b) “quality audit” means an inspection used to evaluate, confirm or verify activity related to quality;</p> <p>(c) “calibration” means a set of operations which establish, under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement.</p> <p>21. (1) No bodily substances shall be taken from a person who is arrested as an accused of a crime (other than the specified offences) unless the consent is given for the taking of the bodily substances.</p> <p>(2) If the consent required under sub-section(1) for taking of bodily substances from a person is refused without good cause or cannot be obtained despite all reasonable efforts, the required bodily substances may be taken on the order passed by the Magistrate, if he is satisfied that there is reasonable cause to believe that the bodily substances may confirm or disprove whether that person was involved in committing the crime.</p> <p>22.(1) Subject to sub-section (2) any person who-</p> <p>(a) was present at the scene of a crime when it was committed; or</p> <p>(b) is being questioned in connection with the investigation of a crime; or</p> <p>(c) intends to find the whereabouts of his missing or lost kith and kin, in disaster or otherwise,</p> <p>may voluntarily consent in writing to bodily substances being taken from him for DNA testing.</p> <p>(2) If the consent of the parent or guardian of a volunteer</p> | <p>Consent for taking bodily substances.</p> <p>Bodily substances given voluntarily.</p> |
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who is below the age of eighteen years is refused without good cause or cannot be obtained despite all reasonable efforts, such substances may be taken from such person with the sanction of a Magistrate.

23. (1) For the purposes of this Act, samples for DNA testing may be collected from the following sources, namely:—

- (a) bodily substances;
- (b) scene of occurrence, or scene of crime;
- (c) clothing and other objects; or
- (d) such other sources as may be specified by regulations.

(2) For the purposes of sub-section (1),-

- (a) any intimate body samples from living persons shall be collected, and intimate forensic procedures shall be performed, by a medical practitioner;
- (b) any non-intimate body samples shall be collected and non-intimate forensic procedure shall be performed by the technical staff trained for the collection of samples for DNA testing under the supervision of a medical practitioner or a scientist having expertise in molecular biology or such other person as may be specified by regulations:

Provided that before collecting bodily substances for DNA testing of a victim or a person reasonably suspected of being a victim who is alive, or a relative of a missing person, or a minor or a disabled person, written consent of such victim or such relative or the parent or guardian of such minor or disabled person and, in case of refusal of consent on behalf of a minor, by the order of the Court, shall be taken.

Explanation.—For the purposes of this section,—

- (a) “intimate body sample” means a sample of blood, semen or any other tissue, fluid, urine or pubic hair; or a swab taken from a person’s body orifice other than mouth; or skin or tissue from an internal organ or body part, taken from or of a person, living or dead;
- (b) “intimate forensic procedure” means any of the following forensic procedures conducted on a living

Sources and manner of collection of body samples for DNA testing.

person, namely:-

- (i) external examination of the genital or anal area, the buttocks and breasts in the case of a female;
- (ii) taking of a sample of blood;
- (iii) taking of a sample of pubic hair;
- (iv) taking of a sample by swab or washing from the external genital or anal area, the buttocks and breasts in the case of a female;
- (v) taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks and breasts in the case of a female;
- (vi) taking of a photograph or video recording of, or an impression or cast of a wound from, the genital or anal area, buttocks and breasts in the case of a female;

(c) “non-intimate body sample” means any of the following taken from or of a person, living or dead, namely:-

- (i) handprint, fingerprint, footprint or toe print;
- (ii) a sample of hair other than pubic hair;
- (iii) a sample taken from a nail or under a nail;
- (iv) swab taken from any part of a person’s body including mouth, but not any other body orifice;
- (v)) saliva; or
- (vi) A skin impression

(d) “non-intimate forensic procedure” means any of the following forensic procedures conducted on a living individual, namely:-

- (i) examination of a part of the body other than the genital or anal area, the buttocks and breasts in the case of a female, that requires touching of the body or removal of clothing;
- (ii) taking of a sample of hair other than pubic hair;
- (iii) taking of a sample from a nail or under a nail;
- (iv) taking of a buccal swab with consent;
- (v) taking of a sample by swab or washing from any external part of the body other than the genital or anal area, the buttocks and breasts in the case of a female;
- (vi) scraping or lifting by tape from any external part of

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| | <p>the body other than the genital or anal area, the buttocks and breasts in the case of a female;</p> <p>(vii) taking of a handprint, fingerprint, footprint or toe print; or</p> <p>(viii) taking of a photograph or video recording of, or an impression or cast of a wound from, a part of the body other than the genital or anal area, the buttocks and breasts in the case of a female;</p> <p>24. If the trial court is satisfied with the plea of the accused person that the bodily substances taken from his person or collected from the place of occurrence of crime had been contaminated, the court may direct the taking of fresh bodily substances for re-examination.</p> <p style="text-align: center;">CHAPTER V</p> <p style="text-align: center;">DNA DATA BANK</p> <p>25. (1) The Central Government shall, by notification, establish a National DNA Data Bank and such number of Regional DNA Data Banks for every State, or two or more States, as it may deem necessary.</p> <p>(2) A Regional DNA Data Bank shall share all DNA data stored and maintained by it with the National DNA Data Bank.</p> <p>(3) The National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and shall store the DNA profiles received from the DNA laboratories in such format as may be specified by regulations.</p> <p>26. (1) Every DNA Data Bank shall maintain the following indices for various categories of data, namely:-</p> <p style="margin-left: 40px;">(a) a ‘crime scene index’;</p> <p style="margin-left: 40px;">(b) a ‘suspects’ index’ or ‘undertrials’ index’;</p> <p style="margin-left: 40px;">(c) an ‘offenders’ index’;</p> <p style="margin-left: 40px;">(d) a ‘missing persons’ index’; and</p> <p style="margin-left: 40px;">(e) ‘unknown deceased persons’ index.</p> <p>(2) In addition to the indices referred to in sub-section(1), every DNA Data Bank shall maintain, in</p> | <p>Taking of bodily substances for re-examination.</p> <p>Establishment of DNA Data Bank.</p> <p>Maintenance of indices by DNA Data Bank.</p> |
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| | <p>relation to each of the DNA profiles, the following information, namely:—</p> <ol style="list-style-type: none"> a. in case of a profile in the suspects' index or undertrials' index or offenders' index, the identity of the person from whose bodily substances the profile was derived; and b. in case of profiles, other than the profiles in the suspects' index or offenders' index, the case reference number of the investigation associated with the bodily substances from which the profile was derived. <p>(3) The indices maintained under sub-section (1) shall include information of data based on DNA testing and records relating thereto, prepared by a DNA laboratory.</p> <p>27.(1) The Central Government shall appoint a National DNA Bank Director for the purposes of execution, maintenance and supervision of the National DNA Data Bank, on the recommendations of a selection committee to be constituted by the Government in such manner and consisting of such persons as may be prescribed.</p> <p>(2) The National DNA Data Bank Director shall be a person possessing such educational qualifications in biological sciences, eligibilities and experience, as may be specified by regulations.</p> <p>(3) The National DNA Data Bank Director shall be a person not below the rank of Director to the Government of India or equivalent who shall report to the Member-Secretary.</p> <p>(4) The National DNA Data Bank Director shall exercise such powers and perform such duties, as may be specified by regulations, under the direction and control of the Member-Secretary.</p> <p>(5) The Central Government may appoint a Regional Data Bank Director, who shall be a person not below the rank of Deputy Secretary to the Government of India or equivalent and, he shall report to the Member-Secretary.</p> <p>28.(1) The Board may, with the approval of the Central Government, appoint such officers and other</p> | <p>DNA Data Bank Director.</p> <p>Officers and other employees</p> |
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| | <p>employees, as it considers necessary, for the National DNA Data Bank and the Regional DNA Data Bank, for the efficient discharge of their functions.</p> <p>(2) The salaries and allowances payable to, and the terms and other conditions of service of the Directors of the National and Regional DNA Data Banks appointed under sub-sections (1) and (5) of section 27 and the officers and other employees appointed under sub-section (1) shall be such as may be specified by regulations.</p> <p>(3) The Board may appoint such experts to assist the DNA Data Bank in the discharge of its functions, on such remunerations and terms and conditions, as may be specified by regulations.</p> <p>29. (1) The criteria and procedures to be followed by the National DNA Data Bank Director on receipt of a DNA profile for comparison with DNA profiles maintained in the DNA Data Bank and communication of the results shall be made to such persons and in such manner as may be specified by regulations:</p> <p>Provided that if the DNA profile is derived from the bodily substances of a living person who is neither an offender nor a suspect, no comparison shall be made of it with the DNA profiles in the offenders' index or suspects' index maintained in the DNA Data Bank.</p> <p>(2) Any information relating to a person's DNA profile contained in the suspects' index or offenders' index of the DNA Data Bank shall be communicated only to the authorised persons.</p> <p>30. (1) On receipt of a DNA profile from the Government of a foreign State, or an international organisation established by the Governments of foreign States or any institution of such Government or international organisation, the Director of the National DNA Data Bank may compare such DNA profile with the DNA profiles contained in the crime scene index, the offenders' index, the suspects' index, the missing persons' index and the unknown deceased persons' index, to determine whether there is a match between the profiles and he may communicate any of the following information to such Government or</p> | <p>of National DNA Data Bank and Regional Data Bank.</p> <p>Comparison and communication of DNA profile.</p> <p>Sharing of DNA profiles with and by foreign Government or organisation or institution or agencies.</p> |
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| | <p>organisation or institution, as the case may be, with the prior approval of the Central Government, through any agency authorised by it, namely:-</p> <ul style="list-style-type: none"> (a) if there is no match between the profiles ; (b) if there is a match between the profiles, any information relating to such matching DNA profile; (c) if, in the opinion of the Director, National DNA Data Bank, the DNA profile is similar to the one contained in the DNA Data Bank, information relating to such similar DNA profile. <p>(2) After receiving the similar DNA profile under clause (c) of sub-section (1), if foreign Government or organisation or institution referred to in that sub-section informs that the possibility of a match between the similar DNA profile with the DNA profile provided by it has not been excluded, any information in relation to such similar DNA profile may also be furnished in the manner specified in sub-section (1).</p> <p>(3) The Central Government may in consultation with the Board,-</p> <ul style="list-style-type: none"> (a) decide and determine the nature and extent of sharing DNA profiles in respect of criminals, missing persons and unidentified bodies with the Government of a foreign State or an international organisation established by the Governments of States or an institution of any such Government or international organisation, as the case may be; (b) request or seek similar information from such foreign state, organisation or institutions, <p>and the provisions of sub-sections (1) and (2) of this section shall <i>mutatis mutandis</i> apply to all such cases</p> <p>31. (1) The information contained in the crime scene index shall be retained.</p> <p>(2) The Director of the National DNA Data Bank shall expunge forthwith the DNA profile,</p> <ul style="list-style-type: none"> (i) of a suspect, after the filing of the police report under the statutory provisions or as per the order of the court; (ii) of an under trial, as per the order of the court; | <p>Retention and expunction of records.</p> |
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under intimation to him, in such manner as may be specified by regulations.

(3) The Director of the National DNA Data Bank shall, on receiving a written request of a person who is neither an offender nor a suspect, but whose DNA profile is entered in the crime scene index or missing persons' index of the DNA Data Bank, for removal of his DNA profile therefrom, expunge forthwith the DNA profile of such person from DNA Data Bank, under intimation to the person concerned, in such manner as may be specified by regulations:

Provided that where such DNA profile is of a minor or a disabled person, expunging shall be made on receiving written request from a parent or the guardian of such minor or disabled person.

(4) All other criteria for entry, retention and expunction of any DNA profile in or from the DNA Data Bank and DNA laboratories shall be such as may be specified by regulations.

CHAPTER VI

CONFIDENTIALITY OF AND ACCESS TO DNA PROFILES, SAMPLES AND RECORDS

32. The DNA profiles, DNA samples and any records thereof, forwarded to, or in custody of the Director of the National DNA Data Bank or the Regional DNA Data Bank, or a DNA laboratory or any other person or authority under this Act shall be kept confidential.

Confidentiality of DNA profiles, DNA samples and records.

33. All DNA data including DNA profiles, DNA samples and records thereof, contained in any DNA laboratory and DNA Data Bank shall be used only for the purposes of facilitating identification of the person and not for any other purpose.

Use of DNA profiles, DNA samples and records for facilitating identification of persons.

34. Any information relating to DNA profiles, DNA samples and records thereof maintained in a DNA laboratory shall be made available for the following purposes, namely:-

Availability of DNA profiles, DNA samples and records in certain cases.

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| | <p>(a) to law enforcement and investigating agencies for identification purposes in criminal cases;</p> <p>(b) in judicial proceedings, in accordance with the rules of admissibility of evidence;</p> <p>(c) for facilitating prosecution and adjudication of criminal cases;</p> <p>(d) for the purposes of taking defence by an accused in the criminal case in which he is charged;</p> <p>(e) in the case of investigations relating to civil disputes or other civil matters or offences or cases listed in the Schedule, to the concerned parties to such disputes or matters or offences or cases with the approval of the court, or concerned judicial officer or authority; and</p> <p>(f) in such other cases, as may be specified by regulations.</p> <p>35. Access to such information contained in the National and the Regional DNA Data Banks may be made available, as the respective DNA Data Bank Directors considers appropriate,-</p> <p>(a) to a person or class of persons, for the sole purpose of proper operation and maintenance of the DNA Data Bank; and</p> <p>(b) the personnel of any DNA laboratory for the sole purpose of training,</p> <p>in accordance with such terms and conditions as may be specified by regulations.</p> <p>36. A person who is authorised to access an index of the DNA Data Bank for the purposes of including information of DNA identification records or DNA profile in that index, may also access that index for the purposes of carrying out one-time keyboard search on information obtained from any DNA sample collected for the purpose of criminal investigation, except for a DNA sample voluntarily submitted solely for elimination purposes.</p> <p><i>Explanation.</i>—For the purposes of this section, “one time keyboard search” means a search under which information obtained from a DNA sample is compared with the information in the index of the DNA Data Bank, without resulting in the information obtained from the</p> | <p>Access to information for operation, maintenance and training.</p> <p>Access to information in DNA Data Bank for one time keyboard search.</p> |
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| | <p>DNA sample being included in the index.</p> <p>37. Access to the information in the crime scene index shall be restricted in such manner as may be specified by regulations, if such information relates to a DNA profile derived from bodily substances of,-</p> <p style="padding-left: 40px;">(a) a victim of an offence which forms or formed the object of relevant investigation; or</p> <p style="padding-left: 40px;">(b) a person who has been eliminated as a suspect in the relevant investigation.</p> <p>38. (1) No person who receives the DNA profile for entry in the DNA Data Bank shall use it or allow it to be used for purposes other than those for which it has been collected in accordance with the provisions of this Act.</p> <p style="padding-left: 40px;">(2) Save as otherwise provided in this Act, no person shall communicate, or authorise the communication of, or allow to be communicated, any information on DNA profiles contained in the DNA Data Banks or the information communicated under sections 29 and 30.</p> <p style="padding-left: 40px;">(3) No person to whom information is communicated or who has access to information under this Act shall use that information for any purpose other than for which the communication or access is permitted under the provisions of this Act.</p> <p style="text-align: center;">CHAPTER VII</p> <p style="text-align: center;">FINANCE, ACCOUNTS AUDIT AND REPORTS</p> <p>39. The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants of such sums of money as the Central Government may consider necessary.</p> <p>40. (1) There shall be constituted a Fund to be called the DNA Profiling Board Fund and there shall be credited —</p> <p style="padding-left: 40px;">(a) any grants and loans made to the Board under this Act;</p> <p style="padding-left: 40px;">(b) all sums received by the Board including fees or charges, or donations from such other source as may be decided upon by the Central Government;</p> | <p>Restriction on access to information in DNA Data Bank.</p> <p>Prohibition on unauthorised use of information of DNA profiles, samples and data identification records.</p> <p>Grants by Central Government.</p> <p>DNA Profiling Board Fund.</p> |
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| | <p>(c) recoveries made of the amounts granted from the Fund; and</p> <p>(d) any income from investment of the amount of the Fund.</p> <p>(2) The Fund shall be applied by the Board for meeting,—</p> <p>(a) the salaries and allowances payable to the Chairperson and Member, the administrative expenses including the salaries, allowances payable to or in respect of officers and other employees of the Board; and</p> <p>(b) the expenses on objects and for the purposes authorised under this Act.</p> <p>41. (1) The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.</p> <p>(2) The Board with the prior approval of the Central Government, shall adopt financial regulation which specifies in particular, the procedure for drawing up and implementing the Board's budget.</p> <p>42. The Board shall prepare, in each financial year in such form and at such time, as may be prescribed, its annual report giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government.</p> <p>43. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Board under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other</p> | <p>Budget.</p> <p>Annual Report.</p> <p>Accounts and Audit of Board.</p> |
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| | <p>documents and papers and to inspect any of the offices of the Board.</p> <p>(3) The accounts of the Board, as certified by the Controller and Auditor General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Board.</p> <p>(4) The accounts of the Board shall be audited by the Controller and Auditor-General annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General.</p> <p>44. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.</p> <p style="text-align: center;">CHAPTER VIII</p> <p style="text-align: center;">OFFENCES AND PENALTIES</p> <p>45. Whoever, by virtue of his employment or official position or otherwise, has in his possession, or has access to, individually identifiable DNA information kept in the DNA laboratory or DNA Data Bank and wilfully discloses it in any manner to any person or agency not entitled to receive it under this Act, or under any other law for the time being in force, shall be punishable with imprisonment for a term which may extend to three years, and also with fine which may extend to one lakh rupees.</p> <p>46. Whoever, without authorisation, wilfully obtains individually identifiable DNA information from the DNA laboratory or DNA Data Bank shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.</p> <p>47. Whoever accesses information stored in the DNA Data Bank otherwise than in accordance with the provisions of this Act shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to fifty thousand rupees.</p> | <p>Annual report and auditor's report to be laid before Parliament.</p> <p>Penalties for unauthorised disclosure of information in DNA Data Bank.</p> <p>Penalties for obtaining information from DNA Data Bank without authorization.</p> <p>Penalties for unlawful access to information in DNA Data Bank.</p> |
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| | <p>48. Whoever knowingly provides a DNA sample or result thereof in any manner to any person not authorised to receive it, or obtains or uses, without authorisation, such sample or result of DNA analysis, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.</p> <p>49. Whoever knowingly and intentionally destroys, alters, contaminates or tampers with biological evidence which is required to be preserved under any law for the time being in force, with the intention to prevent that evidence from being subjected to DNA testing or to prevent the production or use of that evidence in a judicial proceeding, shall be punishable with imprisonment for a term which may extend to five years and also with fine which may extend to two lakh rupees.</p> <p>50. (1) Where an offence under this Act, which has been committed by a company or institution, every person who at the time the offence was committed was in charge of, and was responsible to, the company or institution for the conduct of the business of the company or institution, as well as the company or institution, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company or institution and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company or institution, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.</p> | <p>Penalties for providing or using DNA sample or result without authorization.</p> <p>Destruction, alterations, contamination, tampering with biological evidence.</p> <p>Offences by companies or institutions.</p> |
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Explanation.—for the purposes of this section,—

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER IX
MISCELLANEOUS

51. The Chairperson, Members and other officers of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Chairperson,
Members,
Officers to be
public servants.

52. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or the Chairperson or any Member or officer of the Board acting under this Act for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of
Action taken in
good faith.

53. (1) If at any time the Central Government is of the opinion –

- (a) that, on account of circumstances beyond the control of the Board, it is unable to discharge the functions or perform the duties assigned to it by or under the provisions of this Act; or
- (b) that the Board has persistently defaulted in complying with any direction issued by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Board or the administration of the Board has suffered; or
- (c) that circumstances exist which render it necessary in the public interest to do so,

Power of
Central
Government to
supersede
Board.

it may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in

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| | <p>the notification and the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such:</p> <p>Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board to make representations against the proposed supersession and shall consider the representations, if any, of the Board:</p> <p>Provided further that in the event of supersession, the Central Government shall appoint an administrator who shall be an official not below the rank of a Secretary.</p> <p>(2) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.</p> <p>54. (1) The Central Government may issue such directions, as it may deem fit, to the Board and the Board shall be bound to carry out such directions.</p> <p>(2) If any dispute arises between the Central Government and the Board as to whether a question is or is not a question of policy, the decision of the Central Government thereon shall be final.</p> <p>55. (1) The Central Government may, if it is of opinion that it is expedient so to do, by notification, vary or amend any entry in the Schedule relating to -</p> <p>(a) offences under special laws in item B; or</p> <p>(b) civil disputes and other civil matters in item C; or</p> <p>(c) other offences or cases in item D,</p> <p>and any such varying or amendment shall, as from the date of the notification, be deemed to have been varied or amended in the Schedule.</p> <p>(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.</p> <p>56. No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is</p> | <p>Power of Central Government to issue directions.</p> <p>Power of Central Government to vary or amend Schedule.</p> <p>Courts not to have jurisdiction.</p> |
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any of the following matters, namely:-

- (a) the time and the place at which the Board shall meet and the procedure it shall observe with regard to the transaction of business at its meetings (including quorum at such meetings), under sub-section (1) of section 6;
- (b) the other relevant purposes for the optimum use of DNA techniques and technologies under clause (j) of section 12;
- (c) the form of application, the particulars it shall contain and the fee it shall accompany and the manner in which it shall be made to the Board by every DNA laboratory for approval or for renewal, as the case may be, for the purpose of undertaking DNA testing, under sub-section(2) of section 13;
- (d) the period for which the approval or renewal may be granted, under section 14;
- (e) the standards and procedures that a DNA laboratory shall follow for quality assurance for collection, storage, testing and analysis of DNA samples under clause (a); the documented quality system that a DNA laboratory shall establish and maintain under clause (b); the quality manual with the details therein that every DNA laboratory shall establish and maintain under clause (c); sharing of the DNA data prepared and maintained by DNA laboratory with the State DNA Data Bank and the National DNA Data Bank and the manner thereof under clause (d), of section 17;
- (f) the educational and other qualifications and experience in respect of person in charge of a DNA laboratory, technical and managerial staff, and other employees of DNA laboratory under section 18;
- (g) the measures to be taken by the person in charge of a DNA laboratory under sub-section (1) of section 19;
- (h) the training which the employees of a DNA laboratory shall undergo, the institutions where such training shall be given, the levels and intervals for such training under sub-section (2)

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| | <p>of section 19;</p> <p>(i) the records to be maintained by the person in charge of a DNA laboratory under sub-section (3) of section 19;</p> <p>(j) the measures to be taken by DNA laboratories specified under sub-section (1) of section 20;</p> <p>(k) the other sources for collection of DNA sample under clause (d) of sub-section (1) of section 23;</p> <p>(l) the other person under whose supervision DNA sample may be collected under clause (b) of sub-section (2) of section 23;</p> <p>(m) the format in which the National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and store the DNA profiles under sub-section (3) of section 25;</p> <p>(n) the standards in accordance with which information of data based on DNA analysis shall be prepared by a DNA laboratory under sub-section (1) of section 17;</p> <p>(o) the educational qualifications in science and other qualifications and experience of the Director of the National DNA Data Bank under sub-section (2) of section 27;</p> <p>(p) the powers and duties of the Director of the National DNA Data Bank under sub-section (4) of section 27;</p> <p>(q) the salaries and allowances payable to, and the terms and other conditions of service of the Directors of the National and Regional DNA Data Bank and other officers and employees under sub-section (2) of section 28;</p> <p>(r) the remunerations and the terms and conditions of experts under sub-section (3) of section 28;</p> <p>(s) the criteria and the procedure to be followed by the Director of the DNA Data Bank under sub-section (1) of section 29;</p> <p>(t) the manner in which the DNA profile of a person shall be expunged from the suspects' index/undertrials' index under, sub-section (2) of section 31;</p> <p>(u) the manner in which the DNA profile of a</p> | |
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| | <p>person shall be expunged from the crime scene index or missing persons' index under sub-section (3) of section 31;</p> <p>(v) the criteria for entry, retention and expunction of any DNA profile under sub-section (4) of section 31;</p> <p>(w) the manner in which access to the information in the DNA Data Bank shall be restricted under section 37;</p> <p>(x) The Board shall have the power to frame regulations and give effect to the provisions of this Act including those dealing with financial matter.</p> <p>59. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p> <p>60. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary, for removing the difficulty:</p> <p>Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.</p> | <p>Rules and regulations to be laid before Parliament.</p> <p>Power to remove difficulties.</p> |
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SCHEDULE

[See sections 2(j), 12(s), 34(e) and 55(1)]

List of matters for DNA testing

- A. Offences under Indian Penal Code (45 of 1860) where DNA testing is useful for investigation of offences.
- B. Offences under special laws:
 - (i) The Immoral Traffic (Prevention) Act, 1956 (104 of 1956);
 - (ii) The Medical Termination of Pregnancy Act, 1971 (34 of 1971);
 - (iii) The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);
 - (iv) The Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
 - (v) The Protection of Civil Rights Act, 1955 (22 of 1955);
 - (vi) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989);
 - (vii) The Motor Vehicles Act, 1988 (59 of 1988).
- C. Civil disputes and other civil matters:
 - (i) Parental dispute (maternity or paternity);
 - (ii) Issues relating to pedigree;
 - (iii) Issues relating to assisted reproductive technologies (surrogacy, *in-vitro* fertilization and intrauterine implantation or such other technologies);
 - (iv) Issues relating to transplantation of human organs (donor and recipient) under the Transplantation of Human Organs Act, 1994 (42 of 1994);
 - (v) Issues relating to immigration or emigration;
 - (vi) Issues relating to establishment of individual identity.
- D. Other offences or cases:
 - (i) Medical negligence;
 - (ii) Unidentified human remains;
 - (iii) Identification of abandoned or disputed children and related issues.