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## THE DNA TECHNOLOGY (USE AND APPLICATION) REGULATION BILL, 2019

~ *Kaanan Bhatia*

### I. INTRODUCTION AND CONSTITUTIONAL FRAMEWORK

The DNA Technology (Use and Application) Regulation Bill, 2019 was introduced in the Lok Sabha on 8 July 2019. by Mr. Harsh Vardhan (the Minister for Science and Technology). The Bill provides for the regulation of use of DNA technology and seeks to institutionalise DNA profiling as a credible evidentiary tool for criminal justice, civil disputes, missing persons, disaster victim identification, and for recognizing unknown deceased bodies. It aims to establish a comprehensive regulatory architecture for DNA collection, DNA testing, DNA Data banks, Removal of DNA profiles and establishment of DNA Regulatory board and DNA laboratories.

While the Bill strives to strike a balance between State interest in crime control and the individual's right to privacy and bodily integrity, certain provisions of the bill encroach upon the fundamental right to privacy, recognized under Article 21 and famous case Justice K.S. Puttaswamy v. Union of India<sup>1</sup> of the Indian Constitution.

### II. OBJECTIVES AND STRUCTURE OF THE BILL

The Bill seeks to regulate the use of DNA technology for the purposes of establishing the identity of certain categories of persons including the victims, offenders, suspects, undertrials, missing persons and unknown deceased persons. It aims to—

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<sup>1</sup> Justice K.S. Puttaswamy v. Union of India, 2019 (1) SCC 1

- (i) prohibit laboratories from undertaking DNA testing or analysis without accreditation;
- (ii) establish National and Regional DNA Data Banks to store and maintain DNA profiles with provisions for use, access, retention, and expunction;
- (iii) Establish a DNA Regulatory Board to advise Central and State governments, grant or revoke accreditation to Laboratories, assist investigation agencies in criminal cases, and recommend privacy safeguards in relation to access or use DNA ,samples and their analysis;
- (iv) ensure security and confidentiality of DNA information and records; and lastly
- (v) prescribe offences and penalties for contravention of the Bill's provisions.

The arrangement of clauses demonstrates a carefully layered structure:

- Definitions (Chapter I)
- DNA Regulatory Board (Chapter II)
- Accreditation and Obligation of DNA laboratories (Chapter III–IV)
- Establishment of DNA Data Banks (Chapter V)
- Protection of information (Chapter VI)
- Offences and Penalties (Chapter VIII)<sup>2</sup>

The Bill by mandating accreditation, scientific validation, quality control, and penalties for misuse, tries to place India along UK's Criminal Justice and Public Order Act, 1994 and the US DNA Identification Act, 1994. However, there seems to be severe lapses in uploading Article 21 of the Indian Constitution.

### **III. PRIVACY CONCERNS AND PROPORTIONALITY ANALYSIS**

The Bill's most controversial provision is Section 26, which allows the maintenance of multiple indices including suspects', undertrials', offenders' , missing persons' and unknown deceased persons' indices within DNA Data Banks. Under Section 31(1)<sup>3</sup>, the indefinite retention of crime scene index data is against the right to privacy and fails the proportionality test established in the case of Justice K.S. Puttaswamy Vs Union of India<sup>4</sup>. In this case it was held that the right to privacy is not an absolute right and any invasion of privacy by state or non-state actor must satisfy the triple test i.e.

1. Legitimate Aim

2. Proportionality and

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<sup>2</sup> DNA Technology (Use and Application) Regulation Bill, 2019

<sup>3</sup> Ibid.

<sup>4</sup> Supra Note 1.

### 3. Legality.

In the case of Anuradha **Bhasin v. Union of India**<sup>5</sup>, the SC further refined this test and stated that a law interfering with fundamental rights must be in pursuance of a legitimate State aim and must not infringe rights to an extent greater than is necessary to fulfil the aim.<sup>6</sup> Moreover, the State has a restricted sphere to abridge into the privacy of an individual as per the constitutional standards established under the case of Maneka Gandhi Vs Union of India<sup>7</sup>.

Even the European Court of Human Rights in *S. and Marper v. United Kingdom*<sup>8</sup> held that the indefinite retention of DNA profiles of persons not convicted violated the right to private life under Article 8 of the European Convention. The Grand Chamber observed an indiscriminate and indefinite retention. was "*a disproportionate interference with the applicants' right to respect for private life and did not strike a fair balance between competing public and private interests*"<sup>9</sup> The DNA Technology (Use and Application) Regulation Bill, 2019's section 26 exactly mirrors those struck down in *S. and Marper v. United Kingdom*<sup>10</sup>, creating substantial vulnerability and the provision may be challenged constitutionally.

## IV. CONSENT MECHANISMS AND PROCEDURAL SAFEGUARDS

Section 21<sup>11</sup> talks about taking consent for taking bodily substances from a person arrested. While the section is very clear and provides safeguards, it presents a deceptive simplicity. While one requires written consent for persons arrested for offences punishable with less than seven years of imprisonment, the sub-clause 2 of section 21 permits obtaining bodily substances from an arrested person without consent upon an order by the magistrate merely upon "reasonable cause." This threshold falls substantially below the "compelling state interest" standard articulated by our Supreme Court in privacy matters such as the Puttasawamy case.

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<sup>5</sup> Anuradha Bhasin v. Union of India, AIR 2020 SUPREME COURT 1308, Para 1324

<sup>6</sup> Ibid, Para 1324

<sup>7</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>8</sup> S. and Marper v. United Kingdom (2009) 48 EHRR 50

<sup>9</sup> David Kim, Case: S. and Marper v. United Kingdom, 9 Chi.-Kent J. Int'l & Comp. Law (2009) Available at: <https://scholarship.kentlaw.iit.edu/ckjicl/vol9/iss1/6>

<sup>10</sup> Supra Note 8.

<sup>11</sup> Supra Note 2.

The Supreme Court had held in *Selvi v. State of Karnataka*<sup>12</sup> that personal autonomy is of utmost importance and any interference with it violates the right to privacy especially in circumstances where a person can face criminal charges or penalties. Thus, a possible cross-referencing of DNA profiles for civil and criminal cases even without the consent, knowledge and information of the person, which indisputably amounts to self-incrimination and violative of article 20(3) of the Indian Constitution.<sup>13</sup>

The definition of "intimate bodily substances" in Section 23(3)(a) encompasses intrusive procedures including blood samples, pubic hair, and internal organ tissue. The authorization of such invasive collection based solely upon magistrate satisfaction, without requiring independent medical or ethical oversight, contravenes the principle of bodily autonomy. Even the current framework as well as well-established in the case of *Jamshed v. State of Uttar Pradesh*<sup>14</sup>, it was held that a blood sample can be compulsorily extracted during a medical examination conducted, only under Section 53 of the CrPC and not in civil cases.

## **V. INSTITUTIONAL ARCHITECTURE AND ACCOUNTABILITY DEFICITS**

Section 3<sup>15</sup> talks about establishing a DNA Regulatory Board and section 4<sup>16</sup> talks about its composition. The Chairperson shall be the Secretary of the Department of Biotechnology ex officio, and numerous other members representing other government departments like CBI, NIA, Ministry of law etc. The composition eligibility specified under section 4 of the bill violates the principle of institutional independence essential for bodies exercising quasi-judicial functions, as established in *Union of India v. R. Gandhi*<sup>17</sup>.

Section 54 grants excessive powers to the Central Government to supersede the Board and dissolve it for circumstances which "render it necessary in the public interest" as mentioned in

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<sup>12</sup> *Selvi v. State of Karnataka* AIR 2010 SC 1974

<sup>13</sup> Pallavi Gupta, "CRITICAL ANALYSIS OF THE DNA TECHNOLOGY (USE AND APPLICATION) REGULATION BILL, 2019" <https://ijirl.com/wp-content/uploads/2022/03/CRITICAL-ANALYSIS-OF-THE-DNA-TECHNOLOGY-USE-AND-APPLICATION-REGULATION-BILL-2019.pdf> accessed on 10 November 2025.

<sup>14</sup> *Jamshed v. State of Uttar Pradesh*, 1976 Cri L J 1680 (All)

<sup>15</sup> *Supra* Note 2.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Union of India v. R. Gandhi* 2010 (2) CCC 253

Section 54(1)(c). This excessive power undermines the regulatory independence important for protecting citizens' privacy against state overreach.

## **VI. SECTION 57: AN OUSTER CLAUSE**

Section 57<sup>18</sup> completely ousts the jurisdiction of the court, and states “*No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine*”, giving the regulatory board overriding authority to take actions with no check mechanisms. This section is violative of the principle of right to judicial review and subsequently observed in *Chandra Kumar v. Union of India*<sup>19</sup>The SC held that “*The power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic structure.*”

In absence of a law which can hold the authority liable for infringing the fundamental right of its citizens, the only option left for a citizen is to approach the courts in case of any violation of rights. An ouster of court’s jurisdiction shall leave no remedy if the Board takes any arbitrary decision which is unlawful. In the case of the *State of Tamil Nadu v. K. Shyam Sunder*<sup>20</sup> the Court further said that complete exclusion of judicial review is impermissible even if an alternative remedy exists.

## **VII. DATA BREACH AND PENALTIES**

There are no data breach notification protocols. India can take an example of the EU's General Data Protection Regulation (GDPR) especially Articles 33-34 which mandates and requires a 72-hour breach disclosure, mandating notification to affected individuals whose data is at high risk and their rights can be affected by the data leak. The bill<sup>21</sup> was introduced in 2019, while currently Section 6 of Digital Personal Data Protection Act, 2023 enacted in India mandates mandatory notification to individuals in cases of data breach.

There is no strict liability regime in the current bill for custodial negligence or unauthorized access. Penalties mentioned under Sections 45-48<sup>22</sup> are grossly inadequate for irreversible

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<sup>18</sup> Supra Note 2.

<sup>19</sup> *Chandra Kumar v. Union of India* 1997 (3) SCC 261

<sup>20</sup> *State of Tamil Nadu v. K. Shyam Sunder* 2011 (8) SCC 737

<sup>21</sup> Supra Note 2.

<sup>22</sup> Supra Note 2.

genetic data breaches as DNA profiles are not something like passwords or credit cards and cannot be changed once compromised and as well as expose blood relatives.

Therefore, the present bill's failure to incorporate mandatory breach notification, compensation regimes, and strict liability standards creates a situation where citizens' genetic information can be compromised without consequence or any remedy.

## **VIII. CONCLUSION & RECOMMENDATIONS**

The DNA Technology Bill, 2019, while being important to establish identity of certain individuals and changing India's Forensic landscape, fundamentally compromises on various fundamental rights like right to privacy, right to be forgotten, inadequate consent mechanisms, and severe institutional accountability deficits.

To remedy these constitutional issues, the Bill must mandate time-bound deletion of DNA profiles of unconvict persons, require judicial warrants for non-consensual sampling, ensure Board independence through inclusion of non-governmental experts, incorporate mandatory breach notifications aligned with the Digital Personal Data Protection Act 2023 and establish strict liability regimes for data breaches given DNA's immutable nature and issues it raises in cases of leaks, and remove the jurisdictional ouster clause to preserve fundamental judicial review rights essential to constitutional democracy.