

## DNA Technology Bill: RSTV – Big Picture

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### Larger Background:

- The DNA Technology Regulation Bill, which seeks to control the use of DNA technology for establishing the identity of a person, was introduced in the Lok Sabha recently amid questions being raised by opposition parties on its provisions.
- A similar bill was passed in the Lok Sabha in January, 2019 but it could not be cleared in the Rajya Sabha.
- The bill had then lapsed with the dissolution of the previous Lok Sabha.
- The proposed law, which has been in the making since at least 2003, is the third attempt by the government to enact a law to regulate the use of DNA technology in the country after an earlier version of the Bill had been finalized in 2015 but could not be introduced in Parliament.
- The Indian National Congress was against the introduction of the bill, raising privacy and other concerns.
- The Minister for Science and Technology Dr. Harsh Vardhan, who introduced the Bill however rejected the concerns raised by the opposition saying there is “no serious substance”.
- This edition of the Big Picture will take a closer look at the DNA Technology (Use and Application) Regulation Bill, 2019.

### The DNA Technology (Use and Application) Regulation Bill, 2019:

- The DNA Technology (Use and Application) Regulation Bill, 2019 was introduced in Lok Sabha by the Minister for Science and Technology, Mr. Harsh Vardhan, on July 8, 2019.
- The Bill provides for the regulation of use of DNA technology for establishing the identity of certain persons. Note that the same Bill had been previously introduced in Lok Sabha in August 2018, but lapsed.

### Use of DNA Data:

- Under the Bill, DNA testing is allowed only in respect of matters listed in the Schedule to the Bill.
- These include offences under the Indian Penal Code, 1860, and for civil matters such as paternity suits.
- Further, the Schedule includes DNA testing for matters related to establishment of individual identity.

### Collection of DNA:

- While preparing a DNA profile, bodily substances of persons may be collected by the investigating authorities.
- Authorities are required to obtain consent for collection in certain situations. For arrested persons, authorities are required to obtain written consent if the offence carries a punishment of up to seven years. If the offence carries more than seven years of imprisonment or death, consent is not required.
- Further, if the person is a victim, or relative of a missing person, or a minor or disabled person, the authorities are required to obtain the written consent of such victim, or relative, or parent or guardian

of the minor or disabled person.

- If consent is not given in these cases, the authorities can approach a Magistrate who may order the taking of bodily substances of such persons.

### **DNA Data Bank:**

- The Bill provides for the establishment of a National DNA Data Bank and Regional DNA Data Banks, for every state, or two or more states.
- DNA laboratories are required to share DNA data prepared by them with the National and Regional DNA Data Banks.
- Every Data Bank will be required to maintain indices for the following categories of data: (i) a crime scene index, (ii) a suspects' or undertrials' index, (iii) an offenders' index, (iv) a missing persons' index, and (v) an unknown deceased persons' index.

### **Removal of DNA profiles:**

- The Bill states that the criteria for entry, retention, or removal of the DNA profile will be specified by regulations.
- However, the Bill provides for removal of the DNA profiles of the following persons: (i) of a suspect if a police report is filed or court order given, (ii) of an undertrial if a court order is given, and (iii) on written request, for persons who are not a suspect, offender or undertrial, from the crime scene or missing persons' index.

### **DNA Regulatory Board:**

- The Bill provides for the establishment of a DNA Regulatory Board, which will supervise the DNA Data Banks and DNA laboratories.
- The Secretary, Department of Biotechnology, will be the ex officio Chairperson of the Board.
- The Board will comprise additional members including: (i) experts in the field of biological sciences, and (ii) Director General of the National Investigation Agency and the Director of the Central Bureau of Investigation.

### **Functions of the Board:**

- The functions of the Board include:
  1. advising governments on all issues related to establishing DNA laboratories or Data Banks, and
  2. granting accreditation to DNA laboratories. Further, the Board is required to ensure that all information relating to DNA profiles with the Data Banks, laboratories, and other persons are kept confidential.

### **DNA laboratories:**

- Any laboratory undertaking DNA testing is required to obtain accreditation from the Board.
- The Board may revoke the accreditation for reasons including, failure to: (i) undertake DNA testing, or (ii) comply with the conditions attached to the accreditation.
- If the accreditation is revoked, an appeal will lie before the central government or any other authority notified by the central government.
- Further, every DNA laboratory is required to follow standards for quality assurance in collection, storing, and analysis of DNA samples.
- After depositing the DNA profile for criminal cases, the laboratory is required to return the biological sample to the investigating officer.

- In all other cases, the sample must be destroyed.

### Offences:

- The Bill specifies penalties for various offences, including:
  1. for disclosure of DNA information, or
  2. using DNA sample without authorization. For instance, disclosure of DNA information will be punishable with imprisonment of up to three years and fine of up to one lakh rupees.

### A Few Salient Points:

- The Bill is essentially trying to establish a regulatory framework for the usage of DNA information. It is establishing authorities at the Centre and the State level for keeping DNA information. The Bill also provides for what kind of DNA information would be kept. It also establishes a regulatory board which would have the purpose of authorizing laboratories across the country who would be allowed to collect DNA information.
- The Bill provides a framework for the collection of DNA information and also the removal of DNA information. The Bill provides a schedule at the very end which lists down the circumstances and the provisions of law under which the DNA information that is collected would be used.
- The Law Commission as well looked at the usage of DNA information and they came out with a report. They also recommended a draft bill in 2017. This bill first came to the Lok Sabha (the 16th Lok Sabha) which passed the bill. However, since the 16th Lok Sabha got dissolved, the bill lapsed.

### A Look at the History of the Bill and the need to bring about such a bill:

- This bill was essentially the work of an institution known as the Centre for DNA Fingerprinting and Diagnostics (CDFD), based in Hyderabad. In the year 2000, the institution decided to hold an international congress on how biology is impacting society. This meeting was organized by the then President of India, Dr. A.P.J. Abdul Kalam, and it had a large number of legal minds, including the Chief Justices of High Courts, Supreme Court Judges, and many others from India and abroad, including Ananda Mohan Chakrabarty (who filed an application for a patent on a bacterium that he had modified genetically so that it could consume oil).
- This was a 5 day meeting, and based on this 5-day meeting, a recommendation was made.
- This bill is important because in the present day in India, DNA has been admitted as evidence. DNA was not initially considered as an evidence at all. The Centre for DNA Fingerprinting and Diagnostics (CDFD), worked hard for the admittance of DNA as evidence.
- In the past, one has witnessed cases where witnesses backtrack and turn hostile. Such difficult cases are easily overcome because DNA does not lie. However, one must know how to collect the DNA, and how one must carry out fingerprinting. Initially, this was only done at the Centre for DNA Fingerprinting and Diagnostics (CDFD), but subsequently many labs have been trained. The CBI labs in U.P. were trained by the Centre for DNA Fingerprinting and Diagnostics (CDFD). Now, virtually all over the country we have DNA labs.
- Today, DNA has become a very popular tool to arrive at the truth. DNA can be collected from crime scenes, it can be collected from dead bodies, and can be collected from any body parts and body fluids. DNA can even be extracted from the saliva that people use to seal an envelope. Thus, DNA can help immensely in crime investigations.

### How will the bill help the investigating agencies and the criminal justice system as a whole?

This Bill is going to bring about a revolution in criminology and criminal investigation.

Many times, cases remain unsolved for decades together for the want of DNA data. Now with DNA

technology and their admissibility in a court of law, this is going to be an infallible tool in the hands of investigators and the police forces in the country. One also observes that the civil component has been added into it- this includes paternity issues, IVF fertilizations, progeny issues, etc.

- For the effective storage of DNA data, basic laboratories need to be upgraded and a capacity building exercise can be started.
- Today, India is victim to terrorism and anti-national elements, and they take pains to wipe away forensic evidence. As fugitives of justice, criminals hide their own identities. However, once this bill is enforced, much of these issues would be addressed effectively.

### Would the bill strengthen the judicial system?

- Many times, people get acquitted because of a lack of conclusive evidence. However, DNA evidence is irrefutable, infallible, and concrete in nature. Once DNA sampling and fingerprinting has been done, it becomes conclusive.
- With the successful implementation of this bill, the conviction rate would improve by leaps and bounds. Thus, this bill would support and strengthen the criminal justice delivery system.
- Although people have raised issues of safeguards, but this bill is the need of the hour and has already been delayed a lot.
- When we look at the U.S. and European countries, we find that these countries are using DNA data for solving crime. However, India is lagging behind these nations. This is in fact the loophole that criminals utilize and get away from the justice system.
- Thus, instead of clogging, this bill will de-clog our system.

### Issues with passing the bill in the Rajya Sabha:

- The bill is a technical piece of legislation. Importantly, for Parliament, this is a fresh piece of legislation. Thus, what is required in Parliament is a process of deliberation and consultation. One of those mechanisms is through the process of the Parliamentary Standing Committee. So, perhaps if this bill goes to a Parliamentary Standing Committee for a detailed scrutiny, then the Government would be able to convince political parties and get them onboard with respect to the bill. It is important to note that certain members of Parliament had raised objections to the bill being used in pursuance of civil offences. They wanted civil offences to be kept out of the purview of the bill.
- Some members of Parliament had opposed the bill, saying that the bill will institutionalize a "**surveillance state**" and suggested that first a data protection law should be put in place.
- Some alleged that the draft law is "flawed", and that there is no provision of consent on the storage of DNA data.
- It is important to note that the bill envisages that every data bank will maintain indices like the crime scene index, suspects' or undertrials' index, offenders' index, missing persons' index and unknown deceased persons' index.
- The legislation also seeks to establish a DNA Regulatory Board.
- Every laboratory that analyses DNA samples to establish the identity of an individual, has to be accredited by the board.
- Under the bill, **a written consent by individuals is required to collect DNA samples from them.** Consent is not required for offences with punishment of more than seven years of imprisonment or death.
- Another concern that some experts have pointed out is that DNA information can not only establish identity, but it can also tell us many things about an individual. For example, the kind of medical ailments that could happen. In other countries, only that part of the DNA is used which can be used for establishing identity and the remaining part of the DNA is not used. So, this is another issue that has bothered some experts.
- Having said this, the DNA profile that is generated is a completely neutral profile. Which means if we make a DNA profile, it is only the genetic signature which is placed on record. However, how do

we know that after the collection of DNA data, the material would not be destroyed? If the biological material is not destroyed, it can be taken over by say an insurance agency (which can compromise the privacy of a High Net Worth Individual who has been insured). As a consequence, the premium of the insurance policy would go up as the individual concerned may show signs of an illness.

- The next point to keep in mind is that DNA Data Protection should be looked into.

#### A Few More Noteworthy Points:

- The Law Commission, which submitted the final version of the DNA-Based Technology (Use and Regulation) Bill, 2018 to the government in 2017, did not examine the Bill in light of two important privacy-related developments.
- The Law Commission finished its deliberations regarding the bill by July 2017, a month before a nine-judge bench of the Supreme Court ruled in **Puttaswamy vs Union of India** that Indians enjoy a fundamental right to privacy.
- **In its report, the Law Commission made multiple allusions to the then-impending privacy judgement and stated that, “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 a larger bench of the Supreme Court.”**
- Secondly, the Law Commission’s report preceded Justice Srikrishna’s report which laid down the rights of ‘data principals’ (Indian citizens), proposed the creation of a data authority to enforce the Act, and set penalties for violations by ‘data fiduciaries’.
- Additionally, while the Indian government has maintained that the proposed DNA database project will purportedly cost only Rs 20 crore, analysis by some experts demonstrate that the cost of just acquiring the DNA samples from people arrested in India on criminal charges alone could be over Rs 1,800 crore.
- Another concern raised regarding DNA profiling is related to the lack of proper infrastructure and technical know-how to use it for criminal investigations in a widespread or effective manner.