



DNA FORENSIC: CONTROVERSY, RELEVANCY AND ADMISSIBILITY

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INTRODUCTION

Discovery of DNA is considered as one of the most important discoveries during 20th century owing to its tremendous impact over science and medicine. The emerging fields in various laws have seriously seen a rise in number of cases where DNA test can be used to determine biological relationship between two persons. DNA stands for deoxyribonucleic acid. It is a strand of identity that a person receives from their ancestors. No two persons can have similar DNA pattern except identical twins.

Prior to use of DNA, identification was heavily based on certain technology named as finger prints, foot prints, blood traces or other evidences that the suspect may have left on the crime spot. The era we are living in now has a lot of scientific benefits and one of the booms out of all the innovations that science has given is DNA test. It has proved really useful in following two cases-

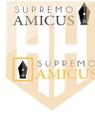
1. To identify criminal from the traces left at crime spot.

2. To trace blood relations in cases of family disputes relating to paternity or maternity.

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 refute¹. However lack of adequate legislative enactments and constitutional provision such as immunity from Self-incrimination and Right to Privacy have left the use of DNA in cases to be decided solely by the judiciary on the basis of facts and circumstances of each case. Various decisions of the judiciary where use of DNA has been allowed have been subjected to controversy. Evidentiary value of Expert opinion finds its place under section 45 of The Indian Evidence Act. However there is no straight jacket formula for determination of the value given to DNA tests and upto what extent the corroboration is required in cases of DNA test reports. The conclusiveness of DNA test is medically accepted all over the world but its legal relevancy is still not clearly decided in absence of straight legislative enactment. Under The Indian Evidence Act, 1872, every evidence that may be legally relevant might not be logically acceptable and everything that is logically acceptable might not be legally relevant.

Despite the absence of legislation relating to DNA printing, the judiciary has leaned in favour of opting DNA test. In cases where rights of a person are needed to be decided by determining their biological

¹ Veeran v. Veeravarmalle & Anr., AIR 2009 Mad. and Harjinder Kaur v. State of Punjab & Ors., 2013 (2) RCR (Criminal) 146.



relation with another person, DNA test is the only conclusive way available.

In India, DNA tests have been relied upon by the courts for deciding various family disputes. Recently the use of DNA has taken a pace and a straight legislation is need of the hour to regulate the conduct of judiciary in relying upon DNA tests. Recently law commission of India submitted its 271st law report with the title “*Human DNA Profiling – A draft Bill for the Use and Regulation of DNA-Based Technology.*” The report was submitted in July 2017 and has not been implemented yet. Since 2015 the Indian legislature is trying to introduce the DNA bill in the Parliament but the efforts has failed miserably. In 2017 again the bill reared its head and centre told Supreme Court that it will introduce the newer version of the bill titled ‘The DNA Based Technology (Use and Regulation) Bill, 2017’. However the results are still awaited.

The forensic DNA is becoming ever more common day by day but is it reliable as well or it’s just the false promises of DNA testing? The question is unanswered in terms of evidentiary value, though courts have trusted DNA test results. There are darker sides of the DNA tests as well.

Let’s see the various facets of DNA testing.

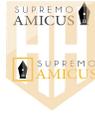
LEGISLATIVE ASPECT OF DNA SAMPLING IN THE INDIAN LAW

DNA profiling is the most effective tool for justice in criminal and civil cases. Although, the Courts are using DNA test

for determining various issues, but still in the present India, there is no specific legislation or specific guidelines for DNA sampling. The legislatures of India dates back to the age when Britishers ruled over the country. Now, with time, as science is advancing, so are the techniques and so should law. There is a need of a statute dedicated for DNA sampling so that it can provide guidance to the Courts and investigative agencies or officers for such DNA tests and their admissibility.

DNA test can be used for both civil and criminal suits. DNA tests are widely used in civil suits to identify the biological relation amongst persons for suits of maintenance, inheritance, succession, determining the paternity, etc. In criminal cases, this technique can be used for identifying the offence-doer, especially in cases of rape.

In spite of lack of a uniform legislation, various statutes contain different provisions for such test. Section 112 of the Indian Evidence Act, 1872, states that “The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.” In such cases, introduction of DNA technique and determination of paternity of a child can be very fruitful. DNA test can give finality to such dilemmas related to paternity of the child. In the case of Nandlal Wasudev Badwaik



v. Lata Nandlal Badwaik², the Hon'ble Supreme Court held that DNA test prevails over presumption of conclusive proof under Section 112 of Indian Evidence Act.

Section 73 of the Indian Evidence Act, 1872 talks about "comparison of signature, writing or seal". Handwriting sampling is also viewed as DNA test, and hence, this provision gives an insight that how indirectly and remotely, DNA testing is envisaged into the Act, even in the times when such technological advancement was absent.

Some provisions of Criminal Procedure Code, 1973, also indicate toward DNA tests. Section 53 of the Criminal Procedure Code talks about "Examination of accused by medical practitioner at the request of police officer". This section also envisages DNA test of the accused.

Section 53-A was added vide the Code of Criminal Procedure (Amendment) Act, 2005, provides 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. The explanation to section 53 clarifies the scope of examination, especially with regard to the use of modern and scientific techniques including DNA profiling. The explanation also applies to section 53A and Section 54 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"³. This section specifically talks about DNA profiling of the accused. In the case of Shreemad Jagadguru Shankaracharya v. State of Karnataka⁴, the Court held that this section is constitutionally valid.

In Krishna Kumar Malik v State of Haryana⁵, the Supreme Court in a rape case observed:

"Now, after the incorporation of Section 53 (A) in the Criminal Procedure Code, w.e.f. 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 provision in the Criminal Procedure Code, prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the Appellant with that found on the undergarments of the prosecutrix to make it a fool proof case."

In Dharam Deo Yadav v. State of Uttar Pradesh⁶, the Supreme Court observed that "Crime scene has to be

² AIR 2014 SC 932.

³ Section 53, Cr.P.C. 1973.

⁴ [2014 SCC OnLine Kar 5639](#).

⁵ (2011) 7 SCC 130.

⁶ 2014 (5) SCC 509.



scientifically dealt with without any error. In criminal cases specifically based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the evidence of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime..”

Section 164A of Criminal Procedure Code talks about “Medical examination of the victim of rape”. In this section also, it says that DNA profiling is done of the victim of rape. This practice of DNA Sampling for rape victims is useful for determining the offender of rape under section 375 or 376 (A to E) of Indian Penal Code, 1860. A landmark judgement was delivered by the High Court of Delhi in the case of Delhi Commission for Women v. Delhi Police⁷, mandating that a SAFE Kit (Sexual Assault Forensic Evidence collection kit) be used by all medical personnel for gathering and preserving physical evidence following sexual assault. Special rooms are to be set up for rape victims to be examined in privacy at every hospital where such cases are received.

Under Section 293 of the Criminal Procedure Code, the reports of certain government scientific experts can be used as evidence in any enquiry, trial or other proceedings under the Criminal Procedure Code and he need not be examined as a witness. But the entry for DNA fingerprinting and diagnostics is not specific in Section 293(4) Criminal Procedure Code. Therefore, the expert has to give evidence in each case where a report has been given.

Section 311-A of Criminal Procedure Code was also added to empower the Magistrate to order a person to give specimen, signatures or handwriting.

Similarly, section 45 of the Indian Evidence Act, 1872 talks about expert opinion. Testimony by DNA experts at courtroom helps in determination of various issues at hand by the Courts.

Section 125 of Criminal Procedure Code, 1973, that is, “Order for maintenance of wives, children and parents”. In such cases as well, DNA test is very useful for getting to know the biological relations amongst persons. Delhi High Court set a precedent in the year 2008 for determining paternity in the case of child maintenance suit⁸. In this case a man filed a suit claiming that he was not the father of the child for whom his wife was claiming maintenance. In this case, DNA test was disallowed by the Trial Court but the Delhi High Court held that “The parentage of the child can only be

⁷ W.P(CRL)696/2008.

⁸ Ravindra v. Sonam (Names are changed for privacy).



determined by a DNA test. The liability to pay maintenance under section 125 Criminal Procedure Code can be avoided by the petitioner with respect to this child only if it is established that he is not the biological son of the petitioner”.

Section 7 of the Family Courts Act talks about jurisdiction of the Family Courts. The section empowers the Family Courts to have jurisdiction of Family Court to decide the legitimacy of any person and suit or proceeding of maintenance, which now uses the technique of DNA tests.

DNA test finds its way into the Hindu Marriage Act, 1955 as well. Section 13 of the Act talks about grounds for divorce, which also includes adulterous relationship. To determine, whether there exists an adulterous relationship or not is possible by the way of DNA test. In the case of Dipanwita Roy v. Ronobroto Roy⁹, the husband alleged his wife of having adulterous relation. The Supreme Court ordered DNA test to determine whether there existed such relationship or not. Hence, it can be said that DNA test may be ordered for proving or disproving adulterous relationship.

Also, in the case of Sharda v. Dharampal¹⁰, it was held that DNA test may be ordered in divorce proceedings. The Supreme Court in this case held that “A matrimonial Court has the power to order a person to undergo a medical test, either at the instance of a party or suo motu. Party is not entitled to

Constitutional protection under Article 20 of Constitution in civil litigation.”

Cases pertaining to Hindu Succession Act also seeks DNA test as a method for conclusively knowing that who is the natural born child to a person to determine the heir of a person. In the case of Nirmaljit Kaur v. State of Punjab¹¹, the Court held that “DNA test can be used to prove that the child produced before the Court was not the child of the petitioner.”

CONSTITUTIONAL VALIDITY OF DNA TEST

The technique of DNA sampling faces a major challenge from Article 20(3) and Article 21 of the Constitution. Article 20(3) talks about right against self-incrimination, that is, no person can be compelled to give evidence against him. Article 21 poses a challenge to this technique by DNA test meaning violation of Right to Privacy. There is a conservative approach taken by the Courts in respect of DNA tests.

Let’s see the judicial approach in relation to these tests of fundamental rights possessing a challenge for DNA tests.

- **Self-incrimination of Persons vide Article 20(3) of the Constitution vis-à-vis Admissibility of DNA forensics**

Article 20(3) of the constitution states that “No person accused of any offence shall be compelled to be a witness against himself”. It must be noted that article 20

⁹ SLP(C) No.5694 of 2013.

¹⁰ AIR 2003 SC 3450.

¹¹ (2005) 8 SLT 755



is a fundamental right guaranteed to the persons by the constitution and not only to the citizens. Use of DNA forensics in various civil and criminal cases has always been debatable in light of this provision of the constitution. Various judicial pronouncements given by the court of law has dealt in length with this controversy. The supreme question is whether giving consent to DNA analysis by own wish or by court's order could be counted as giving evidence against oneself? Let's examine this question through various judicial pronouncements.

A judgment rendered by an eleven-Judges Bench of the Supreme Court in *State of Bombay v. Kathi Kalu Oghad & Ors.*¹² dealt with the issue of self-incrimination. The question which arose in front of Supreme Court was that whether fingerprints and handwriting sampling is against Article 20(3) of the Constitution. The court in this case held that

“The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice.”

The Court also observed that:

“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'. 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.”

In *Smt. Selvi & Ors. v. State of Karnataka*¹³ a three-Judge Bench of the Supreme Court considered the question of whether involuntary administration of certain scientific techniques like narco-analysis, polygraph examination and Brain Electrical Activation Profile (BEAP) tests and the results 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

¹² AIR 1961 SC 1808.

¹³ AIR 2010 SC 1974.



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.”

Later in *Ritesh Sinha v. State of U.P.*¹⁴ the apex court upheld the decision given in case of *Selvi*¹⁵. The same case entertained another question that 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 has competence to direct a person to be subjected to such a test without his consent. 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 has competence to direct a person to be subjected to such a test without his consent?

In this context the two judges deciding the case has different opinions. The Hon“ble Justice Ranjana Desai observed:

“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.”

Whereas 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 content to deal with the 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.”

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

In *Krishan Kumar Malik v. State of Haryana*¹⁶, 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

¹⁴ (2013) 2 SCC 357.

¹⁵ AIR 2010 SC 1974.

¹⁶ (2011) 7 SCC 130.



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.”

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.

However, in Rohit Shekhar v. Narayan Dutt Tiwari & Ors.¹⁷, 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”.

In Kanti Devi v. Poshi Ram¹⁸ 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.”

However, in Nandlal Basudev Badwaik v. Lata Nandlal Badwaik¹⁹ the Court held that:

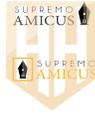
“Depending on the facts and circumstances of the case, it would be permissible for the Court to direct the DNA examination to determine the veracity of the allegation(s) made in a case. If the direction to hold such a test can be avoided, it should so be avoided. The reason is that the legitimacy of the child should not be put to peril.”

Considering various judicial pronouncement it is clear that judiciary has always leaned in favour of DNA forensics. Invention of DNA has certainly proved to be a milestone in administration of justice. DNA sampling is one of the very few methods of procuring evidence whose outcome is approximately 100% certain. Giving science a space in system of administration of justice will turn out to be speedy and reliable methods for delivering justice and establishing rights of victims or the petitioner. In the wake of immunity from self-incrimination, placing hurdle for DNA profiling would

¹⁷ 2012 (2) RCR (Cr.) 889.

¹⁸ AIR 2001 SC 2226.

¹⁹ AIR 2014 SC 932.



not prove useful for anyone in the long run.

- **Right to privacy vis a vis DNA profiling**

Right to privacy which is envisaged in the Constitution of India under Article 21 as Right to Life and Liberty is a challenge to the upcoming and growing technique of DNA mapping and sampling.

There are several judgments claiming that Right to Privacy is a fundamental right and it should not be infringed, and therefore, due to this Courts have a conservative approach towards DNA test. Courts order DNA test in its 'eminent need' and otherwise not.

In *Bhabani Prasad Jena v. Convener Secretary, Orissa State Commission for Women*²⁰, the Supreme Court sketched the approach for courts while directing DNA test. The apex court in the administration of justice observed that

“In a matter where paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child.

Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. In our view, 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 is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made.”²¹

The Supreme Court, in the case of *Goutam Kundu v. State of West Bengal*²¹ held that

“Courts in India cannot order blood test and DNA test as a matter of ordinary course. 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.”

Also, an important observation was made by the Court in this case that “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 the child illegitimate and the mother an unchaste woman?”

One of the most important authorities on the question of whether a party to divorce proceedings be compelled for medical

²⁰ AIR 2010 SC 2851.

²¹ AIR 1993 SC 2295.



examination is the case of *Sharda v. Dharmpal*²². Subsequent to the *Goutam Kundu*'s case, a full bench of the Supreme Court in *Sharda v Dharmpal*²³ considered the power of a matrimonial court to order such test and clarified that *Goutam Kundu*'s²⁴ case is not an authority for the proposition that under no circumstances the Court can direct that blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regard mechanical passing of such order. The Court after hefty discussion summed up three significant conclusions,

1. A matrimonial court has the power to order a person to undergo medical test.
2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.
- 3.

However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him. The three-judge bench of the Supreme Court also observed:
 "If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the court passes an appropriate order, the

question of such action being violative of Article 21 of the Constitution of India would not arise. The court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected."

In this case it was also held 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."

In the leading case of *Nandlal Basudev Badwaik v. Lata Nandlal Badwaik*²⁵, 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.

In the case of *Shri Rohit Shekhar v. Shri N.D. Tiwari*²⁶, the Delhi High Court said that DNA test is not against right to privacy as the reports would be in sealed envelope and the results undisclosed. In the guise of right to privacy, the young man should not be denied access to justice.

The Delhi High Court, in the case of *Kanchan Bedi v. Shri Gurpreet Singh*²⁷

²² AIR 2003 SC 3450.

²³ AIR 2003 SC 3450.

²⁴ AIR 1993 SC 2295.

²⁵ AIR 2014 SC 932.

²⁶ (2012) 12 SCC 554.

²⁷ AIR 2003 Delhi 446.



also, held that DNA testing does not amount to violation of any right.

In the case of Naveen Krishna Bothireddy v. State of Telangana²⁸ also, 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.**

In the cases of Andhra Sugar v. State of Andhra Pradesh²⁹, Siddheshwar Sehkar Sakhar Karkhana Ltd. v. CIT Kolhapur & Ors³⁰ and Harjinder Kaur v. State of Punjab³¹, the Courts observed that “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 obligation”.

Hence, it can be safely said that Courts are adopting the view that DNA test are not against any fundamental right given in the Constitution and that DNA test must be allowed according to facts and circumstances of the case to meet the ends of justice.

With Supreme Court’s recent judgement establishing right to privacy as fundamental right guaranteed under Article 21 of the constitution vide case of Justice K.S. Puttaswamy (retd.), v. Union of India, use of DNA forensics will

be a subject to debates again. However the judicial intent has always been to favour DNA profiling and the decisions tend to lean in favour of relying upon the expert reports in cases of DNA tests.

The controversy will continue till the time a straight law is not formulated by the legislature. Though attempts have been made by the legislature but final result of those efforts is still hidden in the womb of time and a codified law is still awaited.

NEED FOR SPECIAL LAW

Use of DNA reports as evidence in civil or criminal cases is passed through 3 fold litmus test firstly, what is the constitutional validity of such tests?, What is the evidentiary value of forensic information obtained from experts? And in absence of any concrete legislation what judicial stand must be taken by the courts regarding admissibility of DNA forensics?

The law commission in its 271st report has opined that merely amending the Code of Criminal Procedure may not serve the purpose but what is required is a conclusive law which would regulate the whole process of DNA forensics admissibility 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.

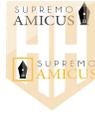
271st Law Commission Report: Human DNA Profiling – A draft Bill for the Use

²⁸ 2017 (1) ALT (CrI.) 422 (A.P.).

²⁹ AIR 1968 SC 599.

³⁰ AIR 2004 SC 4716.

³¹ CrI. Misc. No. M-31938 of 2011.



and Regulation of DNA-Based Technology: Analysis

The bill submitted by The Law Commission of India contains 88 pages and the bill has been formulated considering the need of guidelines for the use of DNA forensic as evidence in court of law. Apart from that the bill advocates for setting up of DNA Data Bank. The bill deals in length various related issues such as ethical framework, International human right laws, right to privacy etc.

Provisions:

Number of recommendations has been made by the law commission in the bill. Out of all those the important ones have been discussed below.

1. **Constitution of DNA Profiling Board:** The board has been empowered with various functions. The board shall have the responsibility of laying down procedures and standards for establishment of 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 be authorized to supervise, monitor, inspect and assess the laboratories. The Board will also frame guidelines for training of the Police officers 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.
2. **Use of DNA profiling:** The use of DNA profiling shall be strictly limited for identification of a person and the

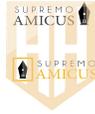
same shall not be used to extract any other information.

3. **Establishment of National And Regional DNA Databanks:** There shall be national and regional data banks for the states and the same shall be established by the Central Government.
4. **Assisting kith and kins:** Provisions have been made in the bill for assisting the kith and kins of missing person on the basis of one's bodily sample and substances.
5. **Rights available to under trials:** In case an under trial satisfies the court that the previous DNA sample(s)/bodily substance(s) stood contaminated and hence could not be relied upon in the instant case, the court may order for another DNA test at the request of under trial.
6. **Confidentiality:** The bill has provisions for maintenance of strict confidentiality with regard to storing of DNA profiles and their use.
7. **Punishment:** The violators of the provisions of the bill shall be liable for punishment in form of imprisonment, which may extend up to three years and shall also be liable for fine which may extend up to ₹2 Lakhs.

CONCLUSION

DNA Profiling is an accurate technique for identification of victim and accused, investigation of crimes, identification of missing persons and human remains, and for medical research purpose. Many countries have adopted this technique to reach to meet the ends of justice.

DNA Profiling and its use thereof involve various legal and ethical issues. Various



concerns are raised by the common man 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

DNA testing has both positive and negative effects of it. On one hand, it can prove to be a very efficacious technique for administration and service of justice. While on the other hand, it can result into disastrous consequences, especially in matrimonial and family disputes. On one hand, it can help victims attain justice; while on the other hand, it can make lives of the people miserable. As it was rightly observed in the case of *Goutam Kundu v. State of West Bengal*³² that “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 the child illegitimate and the mother an unchaste woman?” Such type of results will surely destroy the reputation and the peace of any family.

Therefore, both the sides of this technique should be kept in view. Everything which is a boon can turn into bane if not used properly. In a nut shell a legislative enactment is immediate requirement in this context and later on its interpretation is in the hands of the judiciary as to technique should be opted for administration of justice.

³² AIR 1993 SC 2295.