

Bill No. XXX of 2018

**THE DNA TECHNOLOGY (USE AND APPLICATION)
REGULATION BILL, 2018**

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Bill No. XXX of 2018

**THE DNA TECHNOLOGY (USE AND APPLICATION)
REGULATION BILL, 2018**

A

BILL

to provide for the regulation of use and application of Deoxyribonucleic Acid (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 and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the DNA Technology (Use and Application) Regulation Act, 2018.

Short title,
extent and
commencement.

(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.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

- (i) "Board" means the DNA Regulatory Board established under sub-section (1) of section 3; 5
- (ii) "bodily substances" means any biological material of, or from the body of, a person, whether living or dead, unidentified human remains, and includes intimate bodily substance and non-intimate bodily substance as defined in clauses (a) and (c) of sub-section (3) of section 23; 10
- (iii) "Chairperson" means the Chairperson of the Board;
- (iv) "crime scene index" means a list of entries of DNA profiles, in a DNA Data Bank derived from DNA samples found—
- (a) at any place where an offence was committed or is reasonably suspected of having been committed; or 15
- (b) on or within the body of the victim, or a person reasonably suspected of being a victim, of an offence; or
- (c) on anything worn or carried by the victim at the time when an offence was, or is reasonably suspected of having been, committed; or
- (d) on or within the body of a person, or on anything, or at any place, associated with the commission of an offence; 20
- (v) "Director" means a Director of the National DNA Data Bank or a Regional DNA Data Bank appointed under section 27;
- (vi) "DNA Data Bank" means a DNA Data Bank established under sub-section (1) of section 25; 25
- (vii) "DNA laboratory" means any laboratory or facility established by the Central Government or a State Government or a person or an organisation which has been granted accreditation under this Act to perform DNA testing;
- (viii) "DNA profile" means the result of analysis of a DNA sample for establishing human identification in respect of matters listed in the Schedule; 30
- (ix) "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;
- (x) "DNA testing" means the procedure followed in DNA laboratory to develop DNA profile; 35
- (xi) "Fund" means Fund of the Board constituted under sub-section (1) of section 40;
- (xii) "known sample" means the bodily substances of a person whose identity is established;
- (xiii) "medical practitioner" means a medical practitioner who possesses 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 under that Act; 40 102 of 1956
- (xiv) "Member" means a Member of the Board and includes the Chairperson and Vice-Chairperson; 45

(xv) "Member-Secretary" means the Member-Secretary of the Board;

(xvi) "missing persons' index" means a list of entries of DNA profiles, in a DNA Data Bank, derived from—

(a) unidentified human remains; or

(b) the personal effects of persons who are missing; or

(c) the bodily substances of relatives of the missing persons;

(xvii) "notification" means a notification published in the Official Gazette;

(xviii) "offenders' index" means a list of entries of DNA profiles of samples taken from offenders, in a DNA Data Bank;

(xix) "prescribed" means prescribed by rules made by the Central Government under this Act;

(xx) "proficiency testing" means a quality assurance measure used to monitor performance and identify areas in which improvement may be needed and includes—

(a) internal test which is devised and administered by the DNA laboratory; and

(b) external test, which may be open or blind, and which is devised and administered by an external agency;

(xxi) "quality assurance" includes the systematic actions necessary to demonstrate that a product or service meets specified standards of quality;

(xxii) "quality manual" means a document which specifies the quality procedures, quality systems and practices of an organisation relating to standards, quality control and quality assurance;

(xxiii) "quality system" means the organisational structure, responsibilities, procedure, process and resources for implementing quality management;

(xxiv) "regulations" means the regulations made by the Board under this Act;

(xxv) "suspects' index" or "undertrials' index" means a list of entries of DNA profiles derived from DNA samples taken from the suspects or as the case may be, undertrials, in a DNA Data Bank;

(xxvi) "unknown deceased persons' index" means a list of entries of DNA profiles derived from DNA samples taken from the remains of a deceased person, whose identity is not known, maintained in a DNA Data Bank;

(xxvii) "validation process" means the process by which a procedure is evaluated to determine its efficacy and reliability for casework analysis and includes—

(a) developmental process, being the acquisition of test data and determination of conditions and limitations, of any new DNA methodology for use on case samples; and

(b) internal process, 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.

(2) The words and expressions used and not defined in this Act but defined in the Indian Penal Code, the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973, shall have the meanings respectively assigned to them in those Codes or that Act.

CHAPTER II

DNA REGULATORY BOARD

Establishment
of DNA
Regulatory
Board.

3. (1) The Central Government may by notification, establish for the purposes of this Act, a Board to be called the DNA Regulatory Board.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a 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. 5

(3) The head office of the Board shall be at such place in the National Capital Region, as the Central Government may, by notification, specify. 10

(4) The Board may, with the approval of the Central Government, establish regional offices at such other places as it may deem necessary.

Composition
of Board.

4. The Board shall consist of the following Members to be appointed by the Central Government, namely:—

(a) the Secretary to the Government of India in the Department of Biotechnology, who shall be the Chairperson, *ex officio*; 15

(b) an eminent person from the field of biological sciences having experience of not less than twenty-five years in the field, who shall be the Vice-Chairperson;

(c) a member of the National Human Rights Commission to be nominated by its Chairperson, *ex officio*; 20

(d) the Director-General of the National Investigation Agency and the Director of the Central Bureau of Investigation or their nominees not below the rank of the Joint Director, to be nominated by the Central Government, *ex officio*;

(e) the Director General of Police of a State, to be nominated by the Central Government by rotation every three years from amongst the States in alphabetical order, *ex officio*; 25

(f) the Director of the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, to be nominated by the Central Government, *ex officio*;

(g) the Director of the National Accreditation Board for Testing and Calibration of Laboratories, New Delhi, to be nominated by the Central Government, *ex officio*; 30

(h) the Director of a Central Forensic Science Laboratory to be nominated by the Central Government, by rotation every three years, *ex officio*;

(i) an officer not below the rank of the Joint Secretary to the Government of India in the Ministry of Law and Justice, to be nominated by the Central Government, *ex officio*; 35

(j) an officer not below the rank of the Joint Secretary to the Government of India in the Ministry of Science and Technology, to be nominated by the Central Government, *ex officio*;

(k) one expert, from amongst persons of eminence in the field of biological sciences having experience of not less than twenty-five years in the field; and 40

(l) an officer, not below the rank of Joint Secretary to the Government of India or equivalent, with knowledge and experience in biological sciences, to be nominated by the Central Government, *ex officio*, who shall be the Member-Secretary.

5. (1) The Chairperson shall hold the office in the Board till he remains Secretary in the Department of Biotechnology.

Term of office and conditions of service of Chairperson, Vice-Chairperson and Member.

5 (2) The Vice-Chairperson appointed under clause (b) and the Member appointed under clause (k), of section 4, shall hold office for a period of three years or till he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-nomination for a further period of three years.

(3) The Vice-Chairperson appointed under clause (b) and the Member appointed under clause (k), of section 4, shall be entitled to such pay and allowances as may be prescribed.

10 (4) The Chairperson and other *ex officio* Members may be entitled to such allowances as may be prescribed.

6. (1) The Board shall meet at such time and place and shall, subject to this section, observe such rules of procedure with regard to the transaction of business at its meetings (including the quorum at such meetings) as may be specified by regulations.

Meetings of Board.

15 (2) The Chairperson shall preside over the meetings of the Board and if, for any reason, he is unable to attend a meeting, the Vice-Chairperson and in his absence, the senior-most Member present, reckoned from the date of his appointment to the Board, shall preside over such meeting:

20 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.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or, in his absence, the Vice-Chairperson or, in his absence, the Member presiding over the meeting, shall have a casting vote.

25 (4) Save as otherwise provided under this Act, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

(5) All orders and decisions of the Board shall be authenticated by the Member-Secretary.

30 7. Any 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 and such disclosure shall be recorded in the proceedings of the Board, and such Member shall not take part in any deliberation or decision of the Board with respect to that matter.

Member not to participate in meetings in certain cases.

8. (1) The Central Government may remove from office the Chairperson or any other Member, who—

Removal and resignation of Chairperson or Member and filling up of casual vacancies of Board.

(a) has been adjudged as an insolvent;

(b) has been convicted of an offence involving moral turpitude;

40 (c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

45 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.

(2) If, for any reason, other than temporary absence, any vacancy occurs in the office of a Member, the Central Government shall appoint another Member from the same category in accordance with the provisions of this Act to fill such vacancy, and such Member shall hold office for the remainder of the term of the Member in whose place he has been appointed. 5

(3) Any Member may, by a notice of not less than thirty days in writing under his hand, addressed to the Central Government, resign from office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, 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. 10

Vacancies, etc.,
not to
invalidate
proceedings of
Board.

9. No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a Member of the Board; or 15

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

Delegation of
powers of
Board.

10. (1) The Board may, by general or special order published in the Official Gazette, delegate to the Chairperson or any other Member, subject to such conditions, if any, as may be specified in the order, its functions under this Act (except the power to make regulations), as it may deem necessary. 20

(2) An order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Officers and
other
employees of
Board.

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. 25

(2) The salaries and allowances payable to, and the other terms and conditions of service, including the manner of appointment, of the officers and other employees, under sub-section (1) shall be such as may be prescribed.

Functions of
Board.

12. The Board shall for the purposes of this Act, perform the following functions, namely :— 30

(a) advice the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks, including planning, organisational structure, size, number, location and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks including manpower, infrastructure and other related issues concerning monitoring of their performance and activities; upgradation of DNA laboratories; and making recommendations on funds required for such purposes; 35

(b) grant accreditation to laboratories and to suspend or revoke such accreditation; 40

(c) supervise DNA laboratories and DNA Data Banks, including their quality control;

(d) develop the training modules and frame guidelines for training of manpower, including the police and investigating agencies dealing with DNA related matters;

(e) regulate and audit DNA training programmes for DNA laboratories and DNA Data Banks; 45

(f) identify scientific advances and recommend research and development activities in DNA testing and related issues, including intellectual property issues;

5 (g) lay 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;

(h) recommend 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;

10 (i) adopt and disseminate best practices, concerning the collection and analysis of DNA sample to ensure quality and consistency in the use of DNA techniques, and 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, *inter alia*, relating to—

(i) the rights and privacy of citizens;

15 (ii) the issues concerning civil liberties;

(iii) issues having ethical and other social implications in adoption of DNA testing technology; and

(iv) professional ethics in DNA testing;

20 (j) give advice on matters under this Act which may be referred to it by the Central Government or the State Government;

(k) make recommendations to the Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analyses, and ensure—

(i) implementation and sufficiency of such protection;

25 (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

(v) such other steps as may be required to protect privacy;

30 (l) facilitate exchange of ideas and information on DNA technology;

(m) create awareness among public and other stakeholders, including police officers, prosecutors and judicial officers on the use and application of DNA technology;

35 (n) assist in such manner as may be prescribed, in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing;

(o) advice the Central Government on any modifications required to be made in respect of any matter under the Schedule;

(p) frame guidelines for storage and destruction of bodily substances including known sample;

40 (q) perform such other functions as may be prescribed.

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 without obtaining accreditation from 45 the Board:

Prohibition of DNA testing, etc., without accreditation.

Provided that a laboratory functioning as on the date of the commencement of this Act, may undertake DNA testing or any other procedure relating thereto, for a period of sixty days from such commencement and apply to the Board in accordance with sub-section (2) for obtaining accreditation:

Provided further that such laboratory may, after making an application, continue to undertake DNA testing or any other procedure relating thereto, until its application is decided by the Board. 5

(2) A laboratory seeking accreditation under sub-section (1) shall apply to the Board in such form and manner along with such fees and documents as may be specified by regulations. 10

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

(4) The application for renewal of accreditation shall be made to the Board at least sixty days prior to the expiration of the accreditation in such form and manner and along with such fees as may be specified by regulations. 15

Granting of accreditation or renewal thereof.

14. (1) The Board may, within a period of ninety days from the receipt of application for accreditation or renewal thereof, and after carrying out inspection of the laboratory, its records and books, and if it is satisfied that the laboratory fulfils all requirements under this Act, by order, grant accreditation to such laboratory or renew it, subject to such conditions as it may deem fit: 20

Provided that no application for accreditation shall be rejected by the Board without recording the reasons thereof, and giving the applicant an opportunity of being heard.

(2) The accreditation or renewal of accreditation under this section shall be valid for a period of two years.

Power of Board to suspend or revoke accreditation.

15. (1) The Board may revoke the accreditation granted to a DNA laboratory, if such laboratory fails to— 25

(a) undertake DNA testing or any other procedure relating thereto;

(b) comply with any of the conditions subject to which the accreditation has been granted;

(c) comply with the provisions of this Act or the rules and regulations made thereunder or any other law for the time being in force; 30

(d) comply with the guidelines issued by the Board under this Act; or

(e) submit or offer for inspection its laboratory or books of account and any other relevant documents, including audit reports, when so demanded by the officers or agency authorised by the Board. 35

(2) Where the Board is of the opinion that any delay in revoking accreditation given to a DNA laboratory is prejudicial or detrimental to the public interest, it may suspend the accreditation forthwith pending final decision on such revocation.

(3) No revocation of accreditation of a DNA laboratory shall be made by the Board without giving the laboratory an opportunity of being heard. 40

(4) On the revocation or suspension of accreditation of the DNA laboratory, the laboratory shall hand over all DNA samples and records relating to DNA testing from its laboratory to such DNA laboratory as may be directed by the Board and it shall not retain any sample or record.

Appeal against rejection, suspension or revocation of accreditation.

16. Any laboratory aggrieved, by an order of rejection of its application for accreditation or renewal thereof under section 14 or an order of suspension or revocation of accreditation under section 15, may prefer an appeal to the Central Government or such other authority as 45

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 from the date of receipt of such appeal.

CHAPTER IV

OBLIGATIONS OF DNA LABORATORY

5
17. (1) Every DNA laboratory, which has been granted accreditation for undertaking DNA testing or any other procedure under this Act, shall—

Obligations of DNA laboratory.

(a) follow such standards and procedures for quality assurance in the collection, storage, testing and analysis of DNA sample,

10 (b) establish and maintain such documentation and 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.

15 (2) The DNA laboratory shall report the results of the DNA testing in conformity with the provisions of this Act and the regulations made thereunder.

20 18. Every DNA laboratory shall appoint a person to be in charge of the laboratory and employ such scientific, technical and other staff, possessing such qualifications and experience as may be specified by regulations, for discharging the duties and performing the functions under this Act.

Appointment of incharge, scientific, technical and other staff, of DNA laboratory.

19. The in charge of the DNA laboratory shall,—

(a) 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;

Responsibilities of person in charge of DNA laboratory.

25 (b) ensure that its employees undergo regular training in DNA related subjects, in such institutions, level and intervals, as may be specified by regulations;

(c) maintain such records relating to the laboratory and its personnel as may be specified by regulations.

30 20. (1) Every DNA laboratory shall,—

Measures to be taken by DNA laboratory.

(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,

35 (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,

40 (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, as may be specified by regulations.

(2) The DNA laboratory shall, after deriving the DNA profile and depositing it with the DNA Data Bank,—

(a) 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

(b) in all other cases, destroy the biological sample or remaining material and intimate the person concerned.

(3) For the purposes of this section,—

(a) "analytical procedure" means an orderly step by step procedure designed to ensure operational uniformity;

(b) "quality audit" means an inspection used to evaluate, confirm or verify activity related to quality;

(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.

Consent for taking bodily substances to be taken from a person arrested.

21. (1) No bodily substances shall be taken from a person who is arrested for an offence (other than the specified offences) unless the consent is given in writing for the taking of the bodily substances.

Explanation.—For the purposes of this sub-section, "specified offences" means any offence punishable with death or imprisonment for a term exceeding seven years.

(2) If the consent required under sub-section (1) for taking of bodily substances from a person is refused or cannot be obtained, the person investigating the case may make an application to the Magistrate having jurisdiction for obtaining bodily substances from the arrested person.

(3) The Magistrate may, if he is satisfied that there is reasonable cause to believe that the bodily substances may confirm or disprove whether the person so arrested was involved in committing the offence, order for taking of bodily substances from such person.

Bodily substances given voluntarily.

22. (1) Subject to sub-section (2), any person who—

(a) was present at the scene of a crime when it was committed; or

(b) is being questioned in connection with the investigation of a crime; or

(c) intends to find the whereabouts of his missing or lost relative, in disaster or otherwise,

may voluntarily consent in writing to bodily substances being taken from him for DNA testing.

(2) If the person giving voluntary consent is below the age of eighteen years and the consent of the parent or guardian of such person is refused or cannot be obtained, the person investigating the case may make an application to the Magistrate having jurisdiction, for obtaining such bodily substances and the Magistrate, if he is satisfied that there is reasonable cause for taking the bodily substances from such person, order for taking of bodily substances from that person.

Sources and manner of collection of samples for DNA testing.

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 bodily substance from living persons shall be collected, and intimate forensic procedures shall be performed, by a medical practitioner;

(b) any non-intimate bodily substance 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 shall be obtained and, in case of refusal, the person investigating the case may make an application to the Magistrate having jurisdiction, for obtaining such bodily substances and the Magistrate, if he is satisfied that there is reasonable cause for taking the bodily substances from such person, order for taking of bodily substances from that person.

(3) For the purposes of this section,—

(a) "intimate bodily substance" 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 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 bodily substance" 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; 5

(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; 10

(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 the body other than the genital or anal area, the buttocks and breasts in the case of a female; 15

(vii) taking of a handprint, fingerprint, footprint or toe print; or

(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.

Taking of
bodily
substances for
re-examination.

24. If the trial court is satisfied with the plea of the accused person that the bodily substances taken from such 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. 20

CHAPTER V

DNA DATA BANK

Establishment
of DNA Data
Banks.

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. 25

(2) A Regional DNA Data Bank shall share all DNA data stored and maintained by it with the National DNA Data Bank. 30

(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.

Maintenance
of indices by
DNA Data
Bank.

26. (1) Every DNA Data Bank shall maintain the following indices for various categories of data, namely:— 35

(a) a crime scene index;

(b) a suspect' index or undertrials' index;

(c) an offenders' index;

(d) a missing persons' index; and

(e) unknown deceased persons' index. 40

(2) In addition to the indices referred to in sub-section (1), every DNA Data Bank shall maintain, in relation to each DNA profile, the following information, namely:—

(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 a profile, other than a profile in the suspects' index or undertrials' index or offenders' index, the case reference number of the investigation associated with the bodily substances from which the profile was derived.

(4) 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.

10 27. (1) The Central Government shall appoint a Director of the National DNA Data Bank, on the recommendations of a selection committee to be constituted by that Government, in such manner and consisting of such persons, as may be prescribed, for the purposes of execution, maintenance and supervision of the National DNA Data Bank.

Directors of
DNA Data
Banks.

15 (2) The Director of the National DNA Data Bank shall be a person of eminence possessing such educational qualifications and experience in biological sciences, as may be prescribed.

(3) The Director of the National DNA Data Bank shall be not below the rank of a Director to the Government of India or equivalent and shall function under the supervision and control of the Board.

20 (4) The Director of the National DNA Data Bank shall exercise such powers and perform such duties, as may be specified by regulations.

(5) The Central Government may appoint a Director for each Regional DNA Data Bank, who shall be not below the rank of Deputy Secretary to the Government of India or equivalent, and shall function under the supervision and control of the Board.

25 28. (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 the functions of the National DNA Data Bank and the Regional DNA Data Banks.

Officers and
other
employees of
National DNA
Data Bank and
Regional DNA
Data Banks.

(2) The salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank shall be such as may be prescribed.

30 (3) The Board may appoint such number of officers and experts and other employees to assist the DNA Data Banks in the discharge of its functions, on such remunerations and upon such terms and conditions, including the manner of appointment, as may be specified by regulations.

35 29. (1) The criteria and procedure to be followed by the National DNA Data Bank 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:

Comparison
and
communication
of DNA
profiles.

40 Provided that if the DNA profile is derived from the bodily substances of a living person who is neither an offender nor a suspect or an undertrial, no comparison shall be made of it with the DNA profiles in the offenders' index or suspects' index or undertrials' index maintained in the DNA Data Bank.

(2) Any information relating to a person's DNA profile contained in the suspects' index or undertrials' index or offenders' index of the DNA Data Bank shall be communicated only to the authorised persons.

Sharing of
DNA profiles
with foreign
Government
or
international
organisation.

30. (1) On receipt of a DNA profile from the Government of a foreign State or an international organisation or any institution of such Government or international organisation, 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 undertrials' index, the missing persons' index and the unknown deceased persons' index, to determine whether there is a match between the profiles and the National DNA Data Bank Director may with the prior approval of the Central Government, communicate any of the following information to such Government or organisation or institution, as the case may be, through any agency authorised by notification by the Central Government, namely:—

- (a) that there is no match between the profiles ;
- (b) if there is a match between the profiles, any information relating to such matching DNA profile; or
- (c) if, in the opinion of the National DNA Data Bank Director, the DNA profile is similar to the one contained in the DNA Data Bank, information relating to such similar DNA profile.

(2) After receiving the similar DNA profile under clause (c) of sub-section (1), if the foreign Government or organisation or institution referred to in sub-section (1) informs that the possibility of a match between the similar DNA profile with the DNA profile provided by it has not been excluded, any further information in relation to such similar DNA profile may also be furnished in the manner specified in sub-section (1).

(3) The Central Government may, in consultation with the Board,—

- (a) determine the nature and extent of sharing DNA profiles in respect of offenders, suspects, undertrials, missing persons and unknown deceased persons with the Government of a foreign State or an international organisation or an institution established by that Government or organisation, as the case may be;
- (b) seek similar information from such foreign State, organisation or institutions, and the provisions of sub-sections (1) and (2) shall *mutatis mutandis*, apply.

31. (1) The information contained in the crime scene index shall be retained.

(2) The Director of the National DNA Data Bank shall remove from the DNA Data Bank the DNA profile,—

(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 undertrial, as per the order of the court,

under intimation to him, in such manner as may be specified by regulations.

(3) The National DNA Data Bank shall, on receiving a written request of a person who is neither an offender nor a suspect or an undertrial, 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, remove 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, removal shall be made on receiving written request from a parent or the guardian of such minor or disabled person.

(4) Subject to this section, the criteria for entry, retention and removal of any DNA profile in, or from, the DNA Data Bank and DNA laboratories shall be such as may be specified by regulations.

Retention
and removal
of records.

CHAPTER VI

PROTECTION OF INFORMATION

32. (1) Subject to the provisions of this Act, the Board shall ensure that the information relating to DNA profiles, DNA samples and any records thereof, forwarded to, or in custody 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, are secured and kept confidential. Security and confidentiality of information.

(2) The Board shall take all necessary measures to ensure that the information referred to in sub-section (1) are protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.

(3) Without prejudice to sub-sections (1) and (2), the Board shall—

(a) adopt and implement appropriate technical and organisational security measures;

(b) ensure that any agency appointed or engaged for performing any functions under this Act have in place appropriate technical and organisational security measures for the information; and

(c) ensure that the agreements or arrangements, entered into with any investigation agency, international organisation or institution, impose obligations equivalent to those imposed on the Board under this Act, and require such agency, organisation, or institution to act only on instructions from the Board.

(4) Notwithstanding anything in any other law for the time being in force, and save as otherwise provided in this Act, the Board or any of its officers or other employee, the Director of the National or Regional DNA Data Bank or any of its officers or other employees, or the in-charge and other staff of DNA laboratory or any officer or employee of the agency engaged under this Act shall not, whether during his service or thereafter, reveal any information relating to DNA profiles, DNA samples and any records thereof to anyone.

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, etc., for facilitating identification of persons.

34. Any information relating to DNA profiles, DNA samples and records thereof, maintained in a DNA Data Bank shall be made available for the following purposes, namely:— Access to information in certain cases.

(a) facilitating the identification of persons in criminal cases by the law enforcement and investigating agencies;

(b) judicial proceedings, in accordance with the rules of admissibility of evidence;

(c) facilitating prosecution and adjudication of criminal cases;

(d) taking defence by an accused in the criminal case in which he is charged;

(e) investigation relating to civil disputes or other civil matters or offences or cases specified in the Schedule, by making such information available to the concerned parties with the approval of the court, or to the concerned authority; or

(f) such other purposes, as may be specified by regulations.

Access to information for operation, maintenance and training.

35. Access to such information contained in the National DNA Data Bank and the Regional DNA Data Banks may be made available by the Director if he considers appropriate,—

(a) to a person or class of persons, for the sole purpose of proper operation and maintenance of the DNA Data Bank; and

(b) to the personnel of any DNA laboratory for the sole purpose of training, in accordance with such terms and conditions as may be specified by regulations.

Access to information in DNA Data Bank for one time keyboard search.

36. A person who is authorised to access an index of the DNA Data Bank, 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.

Explanation.—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 DNA sample being included in the index.

Restriction on access to information in crime scene index.

37. Access to the information in the crime scene index contained in the DNA Data Bank 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—

(a) victim of an offence which forms or formed the object of relevant investigation; or

(b) a person who has been eliminated as a suspect in the relevant investigation.

Prohibition on access to information in DNA Data Bank.

38. (1) No person who receives the DNA profile for entry in the DNA Data Bank shall use it or allow or cause it to be used for purposes other than those for which it has been collected in accordance with the provisions of this Act.

(2) Save as otherwise provided in this Act, no person shall communicate, or authorise the communication of, or allow or cause to be communicated, any information on DNA profiles contained in the DNA Data Banks or the information communicated under section 29 or section 30.

(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.

CHAPTER VII

FINANCE, ACCOUNTS, AUDIT AND REPORTS

Grants by Central Government.

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.

DNA Regulatory Board Fund.

40. (1) There shall be constituted a Fund to be called the DNA Regulatory Board Fund and there shall be credited thereto—

(a) any grants and loans made to the Board under this Act;

(b) all sums received by the Board including fees or charges, or donations from such other source as may be decided by the Central Government; and

(c) any income from investment of the amount of the Fund.

(2) The Fund shall be applied by the Board for meeting,—

(a) the salaries and allowances payable to the Members, the officers, experts and the other employees, including administrative expenses, of the Board; and

(b) the expenses for carrying out the purposes authorised under this Act.

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. Budget.
- 5 (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.
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. Annual report.
- 10 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. Accounts and audit of Board.
- (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 documents and papers and to inspect any of the offices of the Board.
- 15 (3) The accounts of the Board, as certified by the Comptroller and Auditor-General of India 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.
- 20 (4) The accounts of the Board shall be audited by the Comptroller 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 of India.
- 25 44. The Central Government shall cause the annual report and auditor's report of the Board to be laid, as soon as may be after they are received, before each House of Parliament. Annual report and auditor's report to be laid before Parliament.

CHAPTER VIII

OFFENCES AND PENALTIES

- 30 45. Whoever, by virtue of his employment or official position or otherwise, has in his possession, or having access to, individually identifiable DNA information kept in the DNA laboratory or DNA Data Bank, 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. Penalty for unauthorised disclosure of information in DNA Data Bank.
- 35 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. Penalty for obtaining information from DNA Data Bank without authorisation.
- 40 47. Whoever, without authorisation, wilfully uses any DNA sample or result of any 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. Penalty for using DNA sample or result without authorisation.
- 45

Penalty for unlawful access to information in DNA Data Bank.

48. 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.

Penalty for destruction, alterations, contamination or tampering with biological evidence.

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.

Penalty for contravention where no specific punishment is provided.

50. Whoever, contravenes any of the provisions of this Act or the rules and regulations made thereunder for which no penalty is provided in 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.

Offences by companies or institutions.

51. (1) Where an offence under this Act, 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:

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.

(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.

Explanation.—For the purposes of this section,—

(a) "company" means any body 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

Chairperson, Members, Officers to be public servants.

52. The Chairperson, Members and other officers of the Board, National DNA Data Bank and Regional DNA Data Banks 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.

Protection of action taken in good faith.

53. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or the Chairperson, Vice-Chairperson or any Member or officer of the Board or the National DNA Data Bank or the Regional DNA Data Banks 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 there under.

Power of Central Government to supersede Board.

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

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.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by an administrator who shall be an official not below the rank of a Secretary to the Government of India, to be appointed by the Central Government; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed to be disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) 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.

55. (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Power of Central Government to issue directions.

(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.

56. (1) The Central Government may, if it is of the opinion that it is expedient so to do, by notification, amend the Schedule so as to include therein or exclude there from, or vary the description of, any entry in any Part thereof.

Power to amend Schedule.

(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.

57. 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.

Court not to have jurisdiction.

58. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the pay and allowances of the Vice -Chairperson and the Member under sub-section (3), and the allowances payable to the Chairperson and other *ex officio* Members under sub-section (4) of section 5; 5

(b) the salaries and allowances payable to, and the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 11;

(c) manner in which the Board shall assist and co-operate in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing under clause (n) of section 12; 10

(d) such other functions of the Board under clause (q) of section 12;

(e) the manner of constitution of a selection committee and persons comprising the committee, for the appointment of a National DNA Data Bank Director under sub-section (1) of section 27; 15

(f) the educational qualifications and experience of the Director of the National DNA Data Bank under sub-section (2) of section 27;

(g) the salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank, under sub-section (2) of section 28; 20

(h) the form in which and the time at which the Board shall prepare its budget under sub-section (1) of section 41;

(i) the form in which and the time at which the Board shall prepare its annual report under section 42; 25

(j) the form in which the annual statement of accounts shall be prepared by the Board under sub-section (1) of section 43; and

(k) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules for carrying out the provisions of this Act.

Power to
make
regulations.

59. (1) The Board may, with the previous approval of the Central Government and after previous publication, by notification in Official Gazette, make regulations consistent with this Act and the rules made there under, to carry out the provisions of this Act. 30

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or 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; 35

(b) the other relevant purposes for the optimum use of DNA techniques and technologies under clause (h) of section 12;

(c) the form, the fee and the manner in which an application for accreditation shall be made by a DNA laboratory under sub-section (2) of section 13; 40

(d) onsite assessment requirements, standards and such other requirements to be complied by a DNA laboratory under sub-section (3) of section 13;

(e) the form, the fee and the manner in which an application for renewal of accreditation shall be made by a DNA laboratory under sub-section (4) of section 13; 45

(f) the obligations to be carried out by a DNA laboratory under sub-section (1) of section 17;

(g) the educational qualifications and experience and other eligibility criterias in respect of person in charge of a DNA laboratory, technical and managerial staff, and other employees of DNA laboratory under section 18;

(h) the measures to be taken, the level and intervals in which the employees shall undergo training and the records to be maintained, by the in charge of a DNA laboratory under section 19;

(i) the measures to be taken by DNA laboratories under sub-section (1) of section 20;

(j) the other sources for collection of DNA sample, under clause (d) of sub-section (1) of section 23;

(k) such other person under whose supervision DNA sample may be collected, under clause (b) of sub-section (2) of section 23;

(l) 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;

(m) the powers and duties of the National DNA Data Bank Director under sub-section (4) of section 27;

(n) the appointment of number of officers, experts and other employees, their remunerations, terms and conditions of appointment, including the manner of appointment, under sub-section (3) of section 28;

(o) the criteria and the procedure to be followed by the National DNA Data Bank Director on receipt of a DNA profile, the person to whom the result shall be communicated and the manner of communication under sub-section (1) of section 29;

(p) the manner in which the DNA profile of a suspect or an undertrial shall be expunged by the National DNA Data Bank Director under sub-section (2) of section 31;

(q) the manner in which the DNA profile of a person who is neither an offender nor a suspect shall be expunged from the crime scene index or a missing persons' index under sub-section (3) of section 31;

(r) other criteria for entry, retention and expunction of any DNA profile under sub-section (4) of section 31;

(s) the other purposes for which the information relating to DNA profiles, DNA samples and records relating thereto shall be made available under clause (f) of section 34;

(t) the terms and conditions for access to information under section 35;

(u) the manner in which access to the information in the crime scene index shall be restricted under section 37;

(v) any other matter which is to be, or may be, or in respect of which provisions is to be, or may be, made by regulations for carrying out the provisions of the Act.

60. 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

Rules and regulations to be laid before Parliament.

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.

Power to
remove
difficulties.

61. (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 it to be necessary, for removing the difficulty: 5

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.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 10

THE SCHEDULE

[See sections 2(1)(viii), 12(o), 34(e) and 56(1)]

List of matters for DNA testing

PART A

Offences under Indian Penal Code (45 of 1860) where DNA testing is useful for investigation of offences

PART 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).

PART 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* fertilisation 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.

PART D

Other cases

- (i) Medical negligence;
- (ii) Unidentified human remains;
- (iii) Identification of abandoned or disputed children and related issues.

STATEMENT OF OBJECTS AND REASONS

The Deoxyribonucleic Acid (DNA) is like a set of instructions or blueprint of all living forms, and it encodes a detailed set of plans for building different pieces of the cell of a living organism to grow and function. The DNA content of every human individual is comprised of one-half of the DNA from each of the two parents. The DNA blueprint varies from one individual to another, and it is this variation, which makes every individual (except identical twins) unique and different. The individual-to-individual variations in DNA permit its use as a means of identification and for establishment of biological relationships between individuals.

2. DNA technology, based on sound scientific principles has been found to be very effective in establishing the parentage of a child and identifying the source of a biological specimen obtained from a scene of crime. The concerns regarding appropriate use of DNA technology by the courts of law and other agencies has made it necessary to develop guidelines and standards for the DNA testing.

3. DNA technology has the potential of wide application in the justice delivery systems. In criminal cases, it helps in investigation of crimes through biological evidence including semen evidence in rape cases, blood evidence in murder cases, saliva evidence in identification of source of anonymous threat letters, etc. In civil cases, it helps in investigations relating to identification of victims of disasters like cyclones, air crash, etc. A number of crimes are committed by repeat offenders, whose apprehension and conviction will be aided by comparison of biological evidence at the scene of crime with DNA profiles stored in a DNA Data Bank. At the same time, the DNA analysis offers substantial information, which if misused or improperly used, can cause harm to individuals or society.

4. Recognising the need for regulation of the use and application of DNA technology, a DNA Profiling Advisory Committee comprising of members from the fields of molecular biology, forensic science, human genetics, population biology, bioethics, legal profession, law enforcement agencies, etc., was constituted in December, 2003 to make recommendations for enacting suitable legislation. On the recommendations of the said Committee, a draft Bill was prepared. Later on, an Expert Committee chaired by the Secretary, Department of Biotechnology, was constituted in 2012 to discuss the privacy related issues. Based on the recommendations of the Expert Committee, the Bill was revised and subsequently referred to the Law Commission of India who in its two hundred and seventy-first report suggested the enactment of a legislation.

5. In view of the above, the DNA Technology (Use and Application) Regulation Bill, 2018 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. The Bill, *inter alia*, seeks to—

(i) prohibit laboratories from undertaking DNA testing, analysing, etc., without obtaining accreditation;

(ii) establish a National DNA Data Bank and Regional DNA Data Banks which shall store and maintain the DNA profiles in accordance with the provisions relating to the use and access to information, its retention and expunction;

(iii) establish a DNA Regulatory Board to carry out the functions assigned to it under the proposed legislation which, *inter alia*, include—

(a) advising the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks;

(b) granting accreditation to laboratories for undertaking DNA testing, analysing, etc., and to suspend or revoke such accreditation;

(c) assisting in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution; and

(d) making recommendations to the Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analyses;

(iv) make provision for the security and confidentiality of information relating to DNA profiling, DNA samples and any records thereof, forwarded to or in the custody of National DNA Data Bank, Regional DNA Data Banks, DNA laboratories or any person or authority;

(v) provide for offenses and penalties for contravention of certain provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 13th July, 2018.

DR. HARSH VARDHAN.

Notes on clauses

Clause 2 of the Bill seeks to define the various expressions used in the Bill.

Clause 3 of the Bill seeks to provide for the establishment of the DNA Regulatory Board as body corporate, having perpetual succession and a common seal, whose head office shall be at such place in the National Capital Region, as the Central Government may specify. The Board may, with the approval of the Central Government, establish regional offices at such other places as it may deem necessary.

Clause 4 of the Bill seeks to provide for the composition of the DNA Regulatory Board which shall consist of a Chairperson a Vice-Chairperson, Member Secretary and ten other members to carry out the functions assigned to it under the Bill.

Clause 5 of the Bill seeks to provide for the terms of office, conditions of service of Chairperson, Vice-Chairperson and other Members of the Board including their pay and allowances.

Clause 6 of the Bill seeks to provide for the procedure for meetings of the Board. It further provides that the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

Clause 7 of the Bill seeks to provide that the Members of the Board shall not participate in meetings in certain cases.

Clause 8 of the Bill seeks to provide for the removal and resignation of Chairperson or Member and filling up of casual vacancies of Board.

Clause 9 of the Bill seeks to provide that no act or proceeding of the Board shall be invalid merely by reason of any vacancy in, or any defect in the constitution of, the Board; or any defect in the appointment of a person acting as a Member of the Board; or any irregularity in the procedure of the Board not affecting the merits of the case.

Clause 10 of the Bill seeks to provide that the Board may, by general or special order published in the Official Gazette, delegate to the Chairperson or any other Member, subject to such conditions, if any, as may be specified in the order, its functions under the Bill (except the power to make regulations), as it may deem necessary. It further provides for laying of such order before each House of Parliament.

Clause 11 of the Bill seeks to provide that the Board may, with the previous approval of the Central Government, appoint such officers and other employees, as it considers necessary, for the efficient discharge of its functions under the Bill. It further provides that the salaries and allowances payable to, and the other terms and conditions of service, including the manner of appointment, of the officers and employees, shall be prescribed by rules made by the Central Government.

Clause 12 of the Bill enumerates the various functions of the Board which shall include, *inter alia*, (a) advising the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks; (b) granting accreditation to laboratories for undertaking DNA testing, analysing, etc., and to suspend or revoke such accreditation; (c) assisting in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution; and (d) making recommendations to the

Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analyses.

Clause 13 of the Bill seeks to provide that no laboratory shall undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto without obtaining accreditation from the Board. It further provides that a laboratory functioning as on the date of the commencement of the Bill, may undertake DNA testing or any other procedure relating thereto, for a period of sixty days from such commencement and apply to the Board in accordance with sub-clause (2) of the said clause, for obtaining accreditation and that such laboratory may, after making an application, continue to undertake DNA testing or any other procedure relating thereto, until the Board decides its application. It also provides that the application for renewal of accreditation shall be made to the Board at least sixty days prior to the expiration of the accreditation in such form and manner and along with such fees as may be specified by regulations made by the Board.

Clause 14 of the Bill provides for grant of accreditation or renewal to the laboratory which seeks to undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto. It further provides that the accreditation or renewal of accreditation under this clause shall be valid for a period of two years.

Clause 15 of the Bill seeks to provide for the power of Board to suspend or revoke accreditation granted to a DNA laboratory, if such laboratory fails to comply with the conditions specified therein. It further provides that no revocation of accreditation of a DNA laboratory shall be made by the Board without giving the laboratory an opportunity of being heard. It also provides that on the revocation or suspension of accreditation of the DNA laboratory, the laboratory shall hand over all DNA samples and records relating to DNA testing from its laboratory to such DNA laboratory as may be directed by the Board and it shall not retain any sample or record.

Clause 16 of the Bill seeks to provide that any laboratory aggrieved, by an order of rejection of its application for accreditation or renewal thereof under clause 14 or an order of suspension or revocation of accreditation under clause 15, may prefer an appeal to the Central Government or such 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 from the date of receipt of such appeal.

Clause 17 of the Bill seeks to provide that every DNA laboratory, which has been granted accreditation for undertaking DNA testing or any other procedure under the Bill, shall follow such standards and procedures for quality assurance in the collection, storage, testing and analysis of DNA sample, establish and maintain such documentation and quality system, prepare and maintain quality manuals containing such details and 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.

Clause 18 of the Bill seeks to provide that every DNA laboratory shall appoint a person to be in-charge of the laboratory and employ such scientific, technical and other staff, possessing such qualifications and experience as may be specified by regulations, for discharging the duties and performing the functions under the Bill.

Clause 19 of the Bill seeks to provide that the in-charge of the 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, ensure that its employees undergo regular training in DNA related subjects, in such institutions, level and intervals, as may be specified by regulations and maintain such records relating to the laboratory and its personnel as may be specified by regulations.

Clause 20 of the Bill seeks to specify the various measures to be taken by DNA laboratory.

Clause 21 of the Bill seeks to prohibit taking of bodily substances from a person who is arrested for an offence (other than the specified offences) unless the consent is given in writing for the taking of the bodily substances.

Clause 22 of the Bill seeks to provide that any person who was present at the scene of a crime when it was committed; or is being questioned in connection with the investigation of a crime; or intends to find the whereabouts of his missing or lost relative, in disaster or otherwise, may voluntarily consent in writing to bodily substances being taken from him for DNA testing, subject to certain conditions specified therein.

Clause 23 of the Bill seeks to provide for the sources and manner of collection of samples for DNA testing.

Clause 24 of the Bill seeks to provide that if the trial court is satisfied with the plea of the accused person that the bodily substances taken from such 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.

Clause 25 of the Bill seeks to provide for the establishment of 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. It further provides that the Regional DNA Data Bank shall share all DNA data stored and maintained by it with the National DNA Data Bank.

Clause 26 of the Bill seeks to provide that every DNA Data Bank shall maintain the indices for various categories of data and the information specified therein.

Clause 27 of the Bill seeks to provide for the appointment of a Director for the National DNA Data Bank and Directors for each Regional DNA Data Banks.

Clause 28 of the Bill seeks to provide for appointment of the officers and other employees of the National DNA Data Bank and the Regional DNA Data Banks, their salaries and allowances, terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank.

Clause 29 of the Bill seeks to provide for the criteria and procedure to be followed by the National DNA Data Bank in comparing and communicating of DNA profile.

Clause 30 of the Bill seeks to provide for the manner of sharing of DNA profiles with foreign Government or organisation or institution or agencies. It further provides that the Central Government may, in consultation with the Board, determine the nature and extent of sharing DNA profiles in respect of offenders, suspects, undertrials, missing persons and unknown deceased persons with the Government of a foreign State or an international organisation or an institution established by that Government or organisation, and seek similar information from such foreign State, organisation or institutions.

Clause 31 of the Bill seeks to provide for the manner of retention and expunction of records in the DNA Data Bank.

Clause 32 of the Bill seeks to make provision for the security and confidentiality of information. It requires the Board to ensure that the information relating to DNA profiles, DNA samples and any records thereof, forwarded to, or in custody of the National DNA Data Bank or the Regional DNA Data Bank or a DNA laboratory or any other person or authority under the Bill, are secured and kept confidential.

Clause 33 of the Bill seeks to provide 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.

Clause 34 of the Bill seeks to provide for the access to information in certain cases.

Clause 35 of the Bill seeks to provide for the access to information for the sole purpose of operation, maintenance and training, in accordance with such terms and conditions as may be specified by regulations.

Clause 36 of the Bill seeks to provide for the access to information in DNA Data Bank for one time keyboard search by the person specified therein.

Clause 37 of the Bill seeks to provide for the restriction on access to information in crime scene index, in such manner as may be specified by regulations, if such information relates to a DNA profile derived from bodily substances of a victim of an offence which forms or formed the object of relevant investigation; or a person who has been eliminated as a suspect in the relevant investigation.

Clause 38 of the Bill seeks to provide for the prohibition on access to information in DNA Data Banks.

Clause 39 of the Bill seeks to provide for the grants to the Board by Central Government.

Clause 40 of the Bill seeks to provide for the constitution of the DNA Regulatory Board Fund.

Clause 41 of the Bill seeks to provide for the preparation of the budget by the Board showing the estimated receipts and expenditure of the Board and forwarding the same to the Central Government.

Clause 42 of the Bill seeks to provide for the preparation of the annual report by the Board giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government.

Clause 43 of the Bill seeks to provide that the accounts and other relevant records of the Board shall be maintained in the form specified by the Central Government by notification and the same shall be audited by the Comptroller and Auditor-General of India.

Clause 44 of the Bill seeks to provide that the annual report and auditor's report of the Board shall be laid before each House of Parliament.

Clause 45 of the Bill seeks to specify the punishment for unauthorised disclosure of information in DNA Data Bank. It provides that 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, wilfully discloses it in any manner to any person or agency not entitled to receive it under the Bill, 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.

Clause 46 of the Bill seeks to specify the punishment for obtaining information from DNA Data Bank without authorisation. It provides that 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.

Clause 47 of the Bill seeks to specify the punishment for using DNA sample or result without authorisation. It provides that whoever, without authorisation, wilfully uses any DNA sample or result of any 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.

Clause 48 of the Bill seeks to specify the punishment for unlawful access of information in DNA Data Bank. It provides that whoever, accesses information stored in the DNA Data Bank, otherwise than in accordance with the provisions of the Bill, 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.

Clause 49 of the Bill seeks to specify the punishment for destruction, alterations, contamination or tampering with biological evidence. It provides that 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.

Clause 50 of the Bill seeks to specify the punishment for contravention when no specific punishment is provided. It provides that whoever, contravenes any of the provisions of the Bill or the rules and regulations made thereunder for which no penalty is provided in the Bill, 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.

Clause 51 of the Bill seeks to specify the punishment for offences by companies or institutions.

Clause 52 of the Bill seeks to provide that the Chairperson, Members and other officers of the Board, National DNA Data Bank and Regional DNA Data Banks shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Bill, to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 53 of the Bill seeks to provide for the protection of action taken in good faith by any officer of the Central Government or Board or any Member or officer or other employee of the Board.

Clause 54 of the Bill seeks to empower the Central Government to supersede Board in the circumstances specified therein.

Clause 55 of the Bill seeks to empower the Central Government to issue directions.

Clause 56 of the Bill seeks to empower the Central Government to amend the Schedule.

Clause 57 of the Bill seeks to provide that no court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under the Bill to determine.

Clause 58 of the Bill seeks to empower the Central Government to make rules on matters enumerated therein.

Clause 59 of the Bill seeks to provide that the Board may, with the previous approval of the Central Government and after previous publication, by notification in Official Gazette, make regulations consistent with the Bill and the rules made thereunder, to carry out the provisions of the Bill.

Clause 60 of the Bill seeks to provide that every rule and regulation made under the Bill shall be laid before each House of Parliament.

Clause 61 of the Bill seeks to empower the Central Government by order published in the Official Gazette, to remove difficulties which may arise in giving effect to the provisions of the Bill. It further requires every such order to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of a DNA Regulatory Board to exercise powers conferred on, and perform the functions assigned to, it under the proposed legislation.

2. Clause 25 of the Bill provides for the establishment of a National DNA Data Bank and Regional DNA Data Banks.

3. Clause 40 of the Bill provides for constitution of a Fund to be called the DNA Regulatory Board Fund into which shall be credited grants and loans made to the Board, all sums received by the Board including fees or charges, or donations from such other source as may be decided by the Central Government and any income from investment of the amount of the Fund.

4. It is estimated that there would be an expenditure of approximately twenty crore rupees as non-recurring capital expenditure and a further recurring expenditure of five crore rupees per annum to carry out all the activities envisaged under the Bill.

5. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 58 of the Bill empowers the Central Government to make rules with respect to the matters specified under sub-clause (2) which, *inter alia*, relate to (a) the allowances payable to the Chairperson and other *ex officio* Members and the pay and allowances of the Vice-Chairperson and the expert Member; (b) the salaries and allowances payable to, and the terms and other conditions of service of officers and employees of the Board; (c) manner in which the Board shall assist and co-operate in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing; (d) the manner of constitution of a selection committee and persons comprising the committee, for the appointment of a National DNA Data Bank Director; (e) the salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank; (f) and the form for preparation of the annual report and the annual statement of accounts by the Board.

2. Clause 59 of the Bill empowers the Board to make regulations with the previous approval of the Central Government. The matters in respect of which the Board may make regulations, *inter alia*, relate to (a) the time and the place of meeting of the Board and the procedure with regard to the transaction of business at its meetings; (b) the form, the fee and the manner in which an application for accreditation shall be made by a DNA laboratory; (c) onsite assessment requirements, standards and such other requirements to be complied by a DNA laboratory; (d) the obligations to be carried out by a DNA laboratory; (e) the educational qualifications and experience and other eligibility criterias in respect of person in charge of a DNA laboratory, technical and managerial staff, and other employees of DNA laboratory; (f) the measures to be taken by DNA laboratories; (g) the format in which the National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and store the DNA profiles; (h) the manner in which the DNA profile of a suspect or an under trial and of a person who is neither an offender nor a suspect shall be expunged; (i) the terms and conditions for access to information; and (j) the manner in which access to the information in the crime scene index shall be restricted.

3. Clause 60 of the Bill requires that the rules and regulations made under the proposed legislation be laid before each House of Parliament.

4. The matters in respect of which the rules or regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

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BILL

to provide for the regulation of use and application of Deoxyribonucleic Acid (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 and for matters connected therewith or incidental thereto.

(Dr. Harsh Vardhan, Minister of Science and Technology and Earth Sciences)