

The DNA Technology (Amendment and Regulation) Bill, 2018



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In This Issue

COVER STORY:

The DNA Technology (Amendment and Regulation) Bill, 2018

SECTION 1: GOVERNANCE AND DEVELOPMENT

- Government sets up a panel headed by commerce minister to discuss the issues concerning RCEP,
- Human Rights activist Thirumurugan Gandhi Arrested at Bengaluru International Airport,
- India ranks among the top 10 nations of citizens illegally overstaying in the US

SECTION 2: INDIA AND THE WORLD

- India opens Border with Myanmar,
- Blockade for Abortion bill in Argentina,
- Back lashing of Police in South Korea over sexist policing,
- Australians eat Parma to help farmers,
- Declining fertility rate

SECTION 3: OPINION /BOOKS

- Launch of the book ‘*The Billionaire Raj*’ by James Crabtree.

Lead Essay

The DNA Technology (Use & Application) Regulation Bill, 2018: ISSUES AND CONCERNS

INTRODUCTION

In the first week of July 2018, the Cabinet gave its approval to the DNA Technology (Use & Application) Regulation Bill, 2018¹ and the Bill was introduced on Aug 9 in the Lok Sabha. ² DNA profiling is a technique to identify individuals through the characteristics of their DNA.

The DNA Technology Bill, 2018 states its objective as “**For the purposes of establishing the identity of certain categories of persons including the victims, offenders, suspects, under trials, missing persons and under trials ,missing persons and unknown deceased persons**”. ³

Thus, the fundamental point being that in the cases involving criminal investigation, missing persons, DNA can be an effective tool for identification and faster disposal of cases.

The DNA Technology Bill, 2018 is alarming because

- First, the issue of protection and safeguards of data related to DNA has not been addressed properly
- Second, the provision of deletion of data has not been dealt with adequately and then in the light of Privacy Judgment, the stakes to breach privacy is higher because legislature now has to cross the barrier of our Right to Privacy as a fundamental right to prove that how this bill or any other bill for that matter in future does not breach our privacy rights. In any discussion on Bills that impact the right to privacy, we have to refer to the landmark judgment of *K Puttuswamy v Union of India*⁴ Judgment, subsequent to which the Right to Privacy as our fundamental Right has been recognised.

I. In this cover story we will take you through first the key features of the Bill and then the issues and concerns raised by passage of such a Bill. Let us begin with the key clauses of the Bill.

II. Key Features of the Bill

a) DNA Regulatory Board

¹Special Correspondent, Union Cabinet clears DNA Profiling bill, (2018, July 04).Retrieved from <https://www.thehindu.com/news/national/union-cabinet-clears-dna-profiling-bill/article24333036.ece> on 3 August 2018.

² Parliament of India, Lok Sabha. Retrieved from <http://164.100.47.194/Loksabha/Legislation/billspending.aspx> on Aug 10,2018

³The DNA Technology Application and Regulation Bill,2018,Retrieved from [http://www.prsindia.org/uploads/media/DNA/DNA%20Technology%20\(Use%20and%20Application\)%20Regulation%20Bill,%202018.pdf](http://www.prsindia.org/uploads/media/DNA/DNA%20Technology%20(Use%20and%20Application)%20Regulation%20Bill,%202018.pdf) on 4 August 2018.

⁴(2014) 6 SCC 233

LEAD ESSAY

III. Key Features of the Bill

b) DNA Regulatory Board:

The functions of the board are explicitly mentioned which range from advising the Central and State Government relating to establishing DNA Laboratories and consistency of DNA techniques and many more.⁵(Chapter II of the DNA Technology Bill, 2018)

c) Accreditation of DNA Laboratories:

DNA shall be given accreditation by the board for which they shall file an application which shall be entertained by the board within sixty days. The (Chapter III of the draft bill)

d) DNA Banks:

The Bill if enacted will create National and Regional DNA Banks. ⁶ (Chapter V of The DNA Technology Bill, 2018)

e) Offences and Penalties:

If anyone uses any DNA sample or result of any DNA analysis without authorisation, punishment ranges from imprisonment for term which may be extended to three years and also fine which may extent to one lakh rupees.⁷(Chapter VIII of The DNA Technology Bill, 2018)

Now that we have gone through the main clauses of the Bill, we move on to the issues that need to be addressed.

IV. Key Issues in the Bill

There are several technical issues related to the DNA banks and its regulatory authority however we begin with the most important one and that is the right to privacy and protection of sensitive data such as DNA profile of citizens.

a) Right to Privacy:

(i) K.S.Puttuswamy v Union of India

- **Right to Privacy has been declared our Fundamental Right in *K S Puttuswamy v Union of India*:**

⁵ Clause 14 of The DNA Technology Bill, 2018

⁶ Clause 25 and 26 of The DNA Technology Bill, 2018

⁷ Clause 47 of The DNA Technology Bill, 2018.

Lead Essay

What we are trying to put forward through stating this judgment and overruling(s) is that judiciary has done its part of protecting our right to privacy and now the onus is on the legislature to realise that this bill if faces future litigation shall be facing many more issues than it does now. To violate a fundamental right which is constitutionally supposed to be protected by state is never taken lightly by the judiciary because it is the state which is constitutionally bound to safeguard fundamental rights. This major development it seems has gone unnoticed by the government.

ii) Privacy Concerns:

- **Possibility of State Surveillance as pointed as pointed by Usha Ramanathan, dissenting member of the committee who drafted the Human Profiling Bill:**

Usha Ramanathan, one of the dissenting members of the committee who drafted the Human DNA Profiling Bill apart from criticising the bill on many issues from technical and financial grounds has also raised the issue of Edward Snowden's revelation about the working of the US National Security which shook the earlier assumption about security of data.⁸

Apex Court also in the Puttuswamy Judgment while discussing privacy concerns against the state mentions that Edward Snowden shocked the world with his disclosures about global surveillance (Page 7).

This must not be construed as arguing that the state is always indulging in surveillance but if Supreme Court is admitting that such phenomenon exists, it is not anymore a concern raised merely by non-state actors.

b) DNA Regulatory Board:

- **Discretionary Power with the board for recommending methods for collection and analyses of DNA samples:**

Now, if we read, (h) part of same clause, it states the function of recommending methods for optimum use but then adds that "or for such other relevant purposes as may be specified by other regulation". As much as these are contradictory, it leaves open the space for adding any other regulation which the board may add for performing the functions.

From the draft bill to the present bill, the area for expanding the scope for which board may function has gone from broad to uncertain and both of the situations are inconsistent with the proper functioning of the board.

⁸Usha Ramanathan, (2015, Aug 22) How the committee that drafted the bill ignored a note of dissent. Retrieved from <https://thewire.in/health/how-the-committed-that-drafted-the-dna-bill-ignored-a-note-of-dissent> on Aug 6, 2018.

Lead Essay

f) **Accreditation of the DNA laboratory:**

- **DNA laboratories to continue to function even before getting accreditation**

The bill states that one of the aims is to prevent laboratories without accreditation from undertaking DNA testing. Then in Clause proviso of Clause 13, it gives the liberty to continue to the laboratory functioning as on the date of the commencement for a period of sixty days and apply for accreditation to the board. Alarming, it allows such laboratories to continue until the application is decided by the board.

g) **Lack of supervisory body:**

- **No supervisory board over the DNA Regulatory Board to advise and monitor it**

DNA Regulatory board is supposed to submit an annual report which is required to be laid before Parliament but there is no provision for the board being advised by any supervisory body. This same issue was present in the DNA Profiling Bill, 2015 bill as well.

h) **Access to Information**

- **Deletion of volunteers and such other indices which every DNA data bank shall maintain for various categories in the present bill:**

A list is mentioned of the indices which every DNA data bank shall maintain for various categories (crime scene, a suspects, offenders, missing person and unknown deceased persons) wherein the category of “volunteers and such other indices” has been deleted in the present bill so data of volunteers shall not be maintained any longer. Additionally, with the deletion of the term “such other indices “from the list, a certainty has been achieved which is a positive step”.

i) **Economic Objections**

- **Low estimation of Budget on part of the Government which is in contradiction with the cost put by the Central for DNA Fingerprinting and Diagnostics(CBDT):**

Usha Ramanathan points out that no studies have been done on how much money the bill might take in the whole establishment of DNA Banks. In her dissenting note, she has stated that *“Home Office spent £2.2 million in 2013-14 running the National DNA Database on behalf of the UK police force*

Lead Essay

Further, in the Financial Memorandum of the bill, it stated that there would be an expenditure of twenty five crores only to carry out all the activities under the bill.

In the context of India, it is estimated that that the cost of acquiring DNA could cost us 1800 crore and *this was the figure based on costs put out by the India's nodal DNA profiling agency, the Centre for DNA Fingerprinting and Diagnostics (CDFD)*⁹

The question which arises here is that can India afford expenses of around 1800 crores which can see further increase due to technical issues which may arise on the way.

Conclusion

One cannot deny that collection of data is inescapable so the constructive path to adopt is to first increase the safeguards to avoid the leak of data and prevention of possibility of identity theft, secondly, avoid the usage of data for purposes other than for it was taken for and thirdly, inform the purpose to the person if under exceptional circumstances (defined clearly in the bill and through the order of Magistrate) data will be used for other purposes than it was taken for.

Additionally, the recognition of our Right to Privacy is gaining acceptance and unless and until a larger bench like the one in Puttuswamy (nine judges bench) decides other way around, our Fundamental Right to Privacy is safe.

What is of ultimate concern is that if privacy is not a concern of a democratically elected government and the onus is on the unelected judiciary to ensure the same, then it raises the question of how safe is our data and our right to privacy.

An independent body can be of immense help in ensuring transparency and accountability in actually performing the aims which The DNA Technology Bill, 2018 envisages.

This bill if is an improvement from the previous version in narrowing down the scope of offences listed under IPC , but the major issues of data protection, deletion and no supervisory body to the DNA regulatory body are still present. No other bill in the past few years has seen redrafting to the extent this one has and if still the major issues are not addressed, it is a failure on the part of part of legislature and to some extent at law commission as well. Now that the bill has been introduced, the debates and issues will be discussed. This bill needs to be reviewed and sent to standing committee to address the existing issues.

Governance And Development

Government sets up a panel headed by commerce minister to discuss the issues concerning RCEP.

(The Hindu Businessline, Aug 09, 2018)

According to a report in Business line, a group of four ministers- Suresh Prabhu (head), Piyush Goel, Nirmala Sitharaman and Hardeep Puri have been assigned the task to discuss concerns flagged by the ministries of steel, pharmaceuticals, agriculture, electronics, heavy industry, textiles and chemicals against the Regional Comprehensive Economic Partnership (RCEP). According to the report, ASEAN's aggressive push to dismantle tariffs on about 90-92% items could expose India's sensitive items, including farm and dairy goods, automobiles and steel products to tariff cuts. RCEP is a proposed free trade agreement (FTA) between the 10 member states of the Association of Southeast Asian Nations and the six Asia-Pacific with which ASEAN has existing free trade agreements.

Read More: <https://www.theweek.in/news/biz-tech/2018/08/08/Group-of-Ministers-to-resolve-issues-concerning-RCEP-agreement.html>

<https://www.thehindubusinessline.com/economy/india-faces-a-stern-test-of-its-commitment-to-rcep/article24636002.ece>

Human Rights activist Thirumurugan Gandhi Arrested at Bengaluru International Airport

(Countercurrent, Aug 09, 2018)

Human right activist and May 17 movement leader Thirumurugan Gandhi was arrested on Thursday Morning at the Bengaluru International Airport by Chennai Police on the charges of sedition. He was returning after addressing UNHRC meeting in Geneva regarding the recent protest against the Sterlite plant at Tuticorin in which 13 people lost their lives. A total of 22 cases have been registered against him by Chennai Police. Gandhi has been actively campaigning against the 8-lane Chennai Salem Green Corridor project and the police firing in Thoothukudi over the Sterlite stir.

Read More: <https://countercurrents.org/2018/08/09/thirumurugan-gandhi-arrested-at-bangalore-airport/>

India ranks among the top 10 nations of citizens illegally overstaying in the US

(Gulf News, Aug 09, 2018)

Over 21,000 Indians overstayed in USA last year after expiration of their visa. The Department of Homeland Security's (DHS) annual report said that more than 10, 70,000 Indians visited USA in 2017 on the B-1, B-2 visas. These visas are issued for business, Travel and Tourism purposes. In 2016, over 10, 00,000 Indians had visited the USA and 17, 763 had overstayed, the report said.

Read More: <https://gulfnews.com/news/asia/india/over-21-000-indians-overstayed-visas-in-us-last-year-1.2263581>

India and the World

India opens Border with Myanmar

(E-Pao, Aug 09, 2018)

In the wake of increase the connectivity between India and its neighbours and to increase the northeast's accessibility Myanmar officially opened its border with India. The land border crossing was inaugurated at Zokhawthar- Rih in the Indian Myanmar border. Zokhawthar is a village in Champhai district of Mizoram while Rih is in Myanmar's Chin State. People from both the countries and third countries can cross. This is a big step in bringing land connectivity and is supposed to boost economy in the region.

Read more <http://e-pao.net/GP.asp?src=1..090818.aug18>

Blockade for Abortion bill in Argentina

(Reuters, Aug 09, 2018)

A bill was proposed to give right to a woman to seek for abortion in the 14th week of pregnancy. The bill was passed in the lower house in July. But the majority in senate voted against in it. The anti abortion activists state that the decision holds the family values of the state. The 'Right to Abortion' activists are still optimistic that the bill will eventually get passed.

Read more <https://in.reuters.com/article/argentina-abortion/argentina-senate-rejects-measure-to-legalize-abortion-idINKBN1KU0KZ>

Back lashing of Police in South Korea over sexist policing

(The Guardian, Aug 09, 2018)

Police in South Korea's port city Busan are seeking to arrest the operator of feminist website 'womad'. The charges developed on the operator were if disseminating sexually explicit material. The arrest warrant has sparked a backlash on police accusing police to be sexist and citing that police had not done much to arrest men for similar crimes. This protest comes in the mid of the ongoing protest against pornography taken through hidden cameras in Korea.

Read more <https://www.theguardian.com/world/2018/aug/10/hunt-for-south-korea-feminist-sparks-backlash-against-sexist-police>

Australians eat Parma to help farmers

(The ADVERTISER, Aug,09 2018)

Parma, a dish of fish crumbled chicken topped with tomato sauce and melted cheese called parmigiana, or Parma for short, is staple pub food. Australians are eating Parma to help the drought stricken farmers of the country. City dwellers show concern towards the farmers and buy Parma in pubs to donate to the farmers cause. This is an attempt to raise fund through 'buy a bale campaign' which would directly go to farmers.

Read more <https://www.adelaidenow.com.au/thesourcesa/parma4afarma-raising-funds-for-buy-a-bale-campaign-to-aid-droughthit-farmers/news-story/55b0c38559d9db8c4eb1bb1fee6e4e64>

India and the World

Declining fertility rate

(Scroll, Aug 09, 2018)

A report shows there has been a decline in the fertility rate all around the world. A half-century ago only six countries – Czechia, Estonia, Hungary, Japan, Latvia and Ukraine which together is 5% of the world's population – reported fertility rates slightly below replacement level. A recent research shows that 83 countries, representing about half of the world's population, report below-replacement level rates. By 2050 more than 130 countries, or about two-thirds of the world's population, are projected to have fertility rates below replacement level.

Read more <https://scroll.in/article/886342/fertility-rates-are-dropping-across-the-world-and-could-soon-become-a-cause-for-concern>

Books/Opinion

Launch of the book '*The Billionaire Raj*' by James Crabtree. (Economist, Aug 09,2018)

The Billionaire Raj (a journey through India's New Glided age), a book by James Crabtree was launched in Mumbai and Delhi, on 6th and 9th of August respectively. Crabtree is an associate professor at the Lee Kuan Yew School of Public Policy, National University of Singapore. He was previously the Mumbai Bureau Chief for Financial Times from 2011-16. The book aims at the documenting the "struggle between equality and privilege playing out at the heart" of post liberalization India. According to scroll. in, the book examines the growth of the ultra rich and its impact on both wealthy and poor in India.

Read more: <https://www.economist.com/books-and-arts/2018/07/05/the-tycoons-who-are-powering-indias-rise>

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