

Evaluation of the Constitutional Implications of DNA Profiling in India

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Abstract: Advances in science have permeated nearly every facet of contemporary civilization, making it impossible to exist without them. DNA profiling, a significant advancement in the investigation process, isn't an exception. Even though DNA is widely used in law enforcement in many nations worldwide, India does not have legislation that specifically governs the use of DNA as a form of identification. As a result, the admissibility & reliability of DNA evidence is a hotly disputed topic, necessitating a thorough examination of legal and executive discourse. DNA profiling and its significance and applicability in criminal and civil investigations are first discussed in this study. Afterwards, the current legal framework in India concerning DNA profiling is examined to identify its limitations and inadequacies. In the third section, the judicial approach to DNA profiling is examined. DNA profiling in India has been addressed in the fourth section of the research, and the author has made recommendations on how to make it completer and more accountable.

Keywords:DNA profiling, Right to privacy, Constitution,Right against self-incrimination, Law, India

Introduction:

Science and technology have advanced rapidly in the modern world, affecting nearly every facet of our social and cultural lives. We've seen a dramatic movement from conventional subjectivism to more contemporary objectivism in law enforcement, and it's not an exception. One example is available when it comes to the advancement of DNA profiling, including fingerprinting. Deoxyribonucleic acid (DNA) is a kind of RNA. There are many applications for DNA testing outside civil and criminal investigations, including locating missing persons, identifying disaster victims, and determining a person's ancestry [1]. Unless you're dealing with

identical twins, no two people have the same DNA sequence. Forensics relies on this fact to help them find people. DNA profiling or fingerprinting is used to compare the suspects in criminal investigations. Several wealthy countries, including the United States and the United Kingdom and China, and Scotland, have begun to use DNA profiling to identify suspects in criminal investigations [2]. The investigation infrastructure in India, on the other hand, lacks a distinct procedural framework for the use of DNA fingerprinting [3]. As far as I know, we've been working on this since 2007, but we haven't been able to develop a system that works for everyone. The effectiveness and constitutionality of the laws can only be judged if the process by which they came to be is understood.

Indian criminal investigations have been altered by DNA-based fingerprinting technology, which has expanded the scope of forensic investigations and benefited law enforcement and the courts alike. Using DNA fingerprinting to identify the guilty or exonerate the innocent since the 1980s has proven to be an invaluable tool. This success with DNA technology has prompted the establishment of databases for DNA samples in India and the adoption of the necessary rules [4]. As important as it is to set up a legal framework to oversee DNA profiling, it is also critical to safeguard individuals' right to privacy & personal liberty by preventing DNA data from being exploited. DNA profiling and DNA profile preservation must therefore protect the subject's privacy and liberty without jeopardising the right to avoid self-incrimination.'

Interpretation of the Term "DNA Testing"

Each nucleus of every cell in the human body has 23 pairs of chromosomes. The linearly ordered genetic units on these chromosomes are known as "Deoxyribonucleic Acid" or "DNA" in scientific jargon. The genetic code is encoded in DNA, the primary genetic material in human cells [5] [6]. A person's personality, conduct, and physical appearance are all shaped by the brain's structure. The DNA profile of an individual is created by further processing the collected DNA in a laboratory. Every person on the earth, except for identical twins, has a unique DNA profile. This results in a unique signature fingerprint or DNA profile for each individual. DNA profiling does not analyse every single difference between individuals, but only those that are necessary for identification. The establishment of a database of offenders, convicted felons, and suspects can be used in the future to identify offenders, convicts, and suspects.

This method has proven to be quite valuable in civil cases, such as determining a person's parentage. Several important aspects make genetic testing reliable, scientific, and objective: i) the amount of DNA required for analysis is extremely small; ii) identification is feasible from a variety of clue materials, such as blood, semens, hair roots, hair shafts and body tissues; iii) DNA does not deteriorate even if stored for very extended periods; and iv) The structure of the DNA in each individual is unique, which measurably increases the accuracy and reliability of the results.

A look at the law and the constitution on DNA profiling:

The Constitution of India is the country's most important legal document. Part III of the Constitution protects people's fundamental rights and freedoms. It exemplifies the constitutional embargo's rule of protection against the compulsion of self-incrimination. Everyone is protected from testifying against themselves under Article 20(3) of the Constitution. The individual's life and liberty are protected under Article 21, forbidding any unlawful intrusions or interferences. Articles 20(3) and 21 of the Constitution and Gandhi's golden triangle rule must be met before DNA profiling technology can be used in light of these requirements.

Sections 53 and 53-A of the Code of Criminal Procedure (CrPC) govern DNA profiling in criminal investigations.

22 Section 53(1) allows the police to request an accused person's DNA profiling. Those accused of rape may also be subject to DNA testing under Section 53A. S.53(1legislative)'s framework for rape defendants is re-enacted in this provision. DNA profiling is not compulsive self-incrimination, it does not violate the constitutional ban under Article 20(3) that prohibits its use in criminal proceedings. An expert's testimony can be used as evidence in court under the Indian Evidence Act 1872 parts 45-51. An expert is a person who has a certain amount of expertise in a particular field because of his or her education, training, or experience. The "expert opinion rule" provides an extraordinary legal framework when it comes to evidence law. The exception is founded on the idea of necessity, which involves topics that are beyond the scope of common knowledge or require specialised knowledge, study, or experience to answer. When the entitled inquiry necessitates scientific knowledge (like DNA testing) in such a manner that a person with no prior knowledge or experience cannot create the correct opinion, courts will use expert opinions to develop righteous judgment so over subjected inquiry [7].

DNA profiling is recognised and admissible in Indian courts under the Criminal Procedure Code and the Evidence Act, however neither statute provides an effective regulatory structure.

A look at the current legal environment for DNA profiling in India:

Indian law has not yet specifically regulated the use and implementation of DNA testing in the court system. However, a few procedural statutes still allow for DNA as evidence. Among them:

- It is a constitutional obligation for Indian citizens under Article 51A, clause (h), of Part IV-A to "strive towards greatness in all spheres of one's individual and collective activity," as well as a duty under Article 51A, clause I to "develop the spirit of scientific temperament, humanism, and inquiry and reform" (j). The ability to legislate to encourage various technology and scientific ways of detecting crimes and speeding up the investigation process is also granted to Parliament under Entry 65 of List I of Schedule VII of the Constitution.
- There are provisions in the 1973 Criminal procedure Code for a medical examination by a licenced physician (Section 53, 54). A new explanation for Section 53 of the Code was added, which describes DNA Profiling as a cutting-edge scientific procedure for examining blood and other biological samples. In addition, Sections 53A and 164A mandate that a doctor create a report detailing the materials obtained from the body of the accused or victim to conduct a DNA analysis.

Many civil cases, such as the favorable outcome of *Shri Rohit Shekhar v. Shri Narayan Dutt Tiwari*, have relied on the reliability of a DNA test to determine parentage. (An expert's opinion on foreign law or science, or identifying handwriting or finger imprints or any art is relevant evidence under the Indian Evidence Act, 1872. While admitting the use and utility of DNA as biological evidence, the existing laws do not give a formal framework or rules for it. This is because the DNA Technology (Use and Application) Regulation Bill, 2019, is still pending. We'd also need instructions on adding, keeping, and deleting DNA profiles from the database that aren't ambiguous [8].

Jurisprudence on the admissibility of DNA profiling in court:

A substantial number of courts have accepted NA fingerprinting as an accurate and decisive method of identifying individuals in civil and criminal matters. Circumstantial evidence has no

place in legal proceedings, but the courts have recognized and emphasised the importance of scientific evidence. The following are some examples of these case laws:

- Santhosh Kumar Singh v. State through CBI

In the Priyadarshini Mattoo case, the lower and upper judges were involved in much of the deliberation & discussion about DNA profiling. Although the Apex Court did not overturn the conviction, it did underline that a court cannot substitute its view for an expert, particularly in relation to a discipline like DNA profiling, a relatively new area in science. In addition, the court found that the competence of the scientists who performed the DNA test, all of whom were well-known and respected, could not be questioned.

- Kamalananda and Others v. State of Tamil Nadu

The rape and murder of 13 orphan girls at the ashram of Swami Premananda is the subject of this lawsuit. According to the DNA test results, there is no reasonable doubt whether Swami Parmanand conceived the terminated child. High Court appeals were filed following convictions in the trial court, which were affirmed.

- Rohit Shekhar v. Narayan Dutt Tiwari

The Delhi High Court judges aptly discussed DNA in paternity suits in this high-profile case. The petitioner provided sufficient DNA evidence to prove that his biological father could not be his legal father. N.D. Tiwari could be Rohit Shekhar's biological father, according to photographic and anecdotal evidence provided by Mr. Tiwari. Respondent's DNA must be tested against petitioner's following Delhi High Court's ruling. The Supreme Court upheld the High Court's decision in this case.

- NandlalWasudeoBadwaik v. Lata NandlalWasudeoBadwaik&Anr.

The Supreme Court overturned the presumption rule in Section 112 of the 1872 Indian Evidence Act that justified the acceptance of a DNA test report in this child support case. According to the Supreme Court, the guy was not the biological father of the female child and so could not be compelled to care for her. The Court argued that where the most refined scientific methodologies are available, the Court should not rely on presumptions under Section 112. The only way to find out the truth is to turn to science.

DNA Profiling: Constitutional Issues:

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Even after the Puttaswamy verdict, experts are concerned that the latest release of the DNA Bill does not adequately protect an individual's privacy and dignity. The 2019 DNA Bill does not include enough safeguards to protect the security and privacy of the obtained samples. The information included in a person's DNA goes well beyond the information needed to identify him or her; it contains information about the person's ancestry, physical traits, and even any genetic disorders that the person may be harbouring. Civil matters are included in the DNA Bill's Schedule, which indicates that DNA legislation is intended to cover all aspects of life, not only criminal ones. However, there are no rules dictating how civil cases should be handled. As a result, the collecting and using biological samples for DNA profiling may be questioned if the technique is not standardised and regulated or if the information is misused or mistreated [9].

The rule on self-incrimination is the second obstacle that the proposed legislation on DNA profiling will overcome. DNA samples are contested in every instance where the prosecution demands them for investigation because Article 20(3) of the Constitution of India prohibits such a demand. Indian courts have sought to broaden this privilege, but not in such a way as to compromise the rights of the victim.

Conclusion:

This new DNA profiling technology must be used with caution, balancing the individual constitutional rights and the public interest in light of the anticipated enhancements to justice delivery. In India, the usage and use of DNA profiling in civil and criminal matters should be regulated and augmented by a specific standalone law. The Indian law enforcement system (police and other enforcement agencies) must be evaluated to see if they are adequately prepared

to deal with this evidence. To create a budget and allocate resources, it is necessary to look at the cost-benefit effectiveness in India. Regulations will be used to delegate authority and broaden the scope of the bill's provisions. A system of checks and balances should be in place to ensure the proper exercise of such broad powers, and this should be included in the wording of the primary legislation. Privacy experts must be included in the Board's makeup, which must be established as a regulating body. Despite their differences, the study of science and law are sometimes combined to get a more objective outcome. As a result, policies relating to human genomics should be based on a multidisciplinary approach that balances the legal approach with human rights concerns, given the sensitive nature of the biological material involved.

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