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# Constitutional Validity of Scientific Evidence in Criminal Justice System

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## ABSTRACT

*In its most basic form, the protection of human rights is the protection of human dignity. The National Human Rights Commission must fulfill this lofty goal. It is a goal that is derived not only from the Commission's statute but also from Article 21 of the Constitution, which the Supreme Court has interpreted to indicate that everyone in India has a right to live in dignity. There should be no question or hesitancy about the Constitution's mandate to defend human rights and dignity. The responsibility to understand and follow this imperative increase with power. Mahatma Gandhi, who had an unmatched ability to speak the truth simply and plainly, phrased it like as follow: "It has always been a mystery to me how men can feel themselves honored by the humiliation of their fellow beings." Therefore, Gandhiji's observation and truth should be continually kept in mind by every Indian citizen, especially by State employees. That would help us get closer to a world where everyone can live in dignity. This Annual Report is a succinct account of the National Human Rights Commission's efforts in 2000–2001 to further that cause. In this article the researchers are analyzing individual's rights with regard to DNA test and constitutional validity of such tests in criminal justice system.*

**Keywords:** Human rights, DNA test, Criminal Justice sytem, Narco Analysis, Criminal Law.

## I. INTRODUCTION

The international Human Rights Charter places a strong emphasis on the right to life and personal liberty. Of course, men and women have been deprived of these rights for a very long time, and in many communities, those rights are currently being violated with impunity and blatant brutality. The Charter of Universal Rights naturally included every facet of this right. Every person has the right to life, liberty, and personal security, according to Article 3 of the Declaration. Every human being has an intrinsic right to life, as is proclaimed in Art. 6 of the Second Covenant, and this right must be upheld by the law. In a same vein, Article 9(1) of the Covenant affirmed that everyone has the right to their own security and freedom. Similar to clause (2), clause (3), and clause (4) of Art. 19, these clauses address further facets of personal

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liberty.<sup>3</sup> The Indian Constitution's Article 21 deals with the right to life and personal liberty, while Articles 20 and 22 protect that right from arrest and detention in order to uphold human dignity and treat people fairly.

Denying the use of forensic science in criminal investigations constitutes a serious violation of human rights in and of itself because it allows the continuation of violent and flawed policing techniques and the gross abuses that follow if a perpetrator of a crime or a serious violation of human rights is not discovered due to improper forensic analysis, whether on purpose or accidentally. Crime and violations of human rights are further promoted in situations where appropriate remedies are not on the horizon. Therefore, any state that is serious about deterring crime and defending human rights must enhance the standard of criminal investigations, which calls for heavily utilising forensic science skills. Due to the extensive authority that the police hold, the involvement of forensic experts in criminal investigations is typically constrained throughout Asia. The police are in charge of all aspects of criminal investigation in the majority of nations, although in a few, the public prosecutor also has some authority. The function of forensic experts has not always been explicitly outlined by law; in the majority of cases, their participation in criminal investigations is optional. As a result, forensic experts are rarely used by the police or the prosecution.

Governments and the general public must approach challenges to the expanded use of forensic science in criminal investigations as challenges to the defence of human rights. It should be mentioned that the presence of persons who have dared to speak up has contributed to areas where forensic science has become a crucial component of criminal investigations.

## **II. INDIVIDUAL RIGHTS AND DNA**

The Courts take a very cautious approach to DNA testing and how it is used in fact-finding. As the order for such a test may interfere with the individual's personal liberty, which is protected by Article 21 of the Constitution<sup>4</sup>, the Courts are extremely cautious in applying this test because they believe it may violate the fundamental tenet of human rights. Additionally, the courts believe that such an order may infringe on an accused person's right protected by Article 20(3) of the Constitution. But it is sincerely believed that the Court is taking a biased stance in this case. If a kid's father refuses to accept responsibility for raising the child as his biological father, will this not constitute a violation of human rights? Which father—social or biological—shall

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<sup>3</sup> Human Right violation and The Law, Asima Sahu, first published in 1999 quoted by Mrs. Shashi Jain p. 91-92.

<sup>4</sup> Art. 21. Says-No person shall be deprived of his life and personal liberty except according to the procedure established by law.

have the right and the obligation to care for the child in such a delicate situation?

The Supreme Court ruled in the well-known case of *Gautam Kundu v. State of West Bengal*<sup>5</sup> held that:

- Courts in India cannot order blood test as a matter of course.
- Whenever applications are made for such prayers in order to have roving inquiry the prayer for blood test cannot be entertained.
- There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Indian Evidence Act, 1872.
- The Court must carefully examine as to what would be the consequence of ordering the blood test. Whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
- No one can be compelled to give sample of blood for analysis.

From the above opinion of the Hon'ble Supreme Court it is clear that no person can be compelled for blood test or DNA test, but where there is a prima facie evidence that after a valid marriage if a child is born either during its continuance or within 280 days if the mother is still single on the date of the dissolution of the marriage, this fact will be taken as conclusive evidence that the child is this man's legitimate child.

The Supreme Court's ruling above, which dealt with a parentage-related dispute, cannot be seen as a rule that applies to all instances in which DNA or blood testing is involved. Therefore, in a rape case when the victim is the only eyewitness accusing the alleged offender, the accused may argue that the semen recovered from the woman's body cannot be matched with him by requesting that he undergo DNA testing. Accepting the defence of the accused person's fundamental right under Art. 20(3) in such circumstances will only result in the offender's escape and grave injustice to the victim.

The father of a child born as a result of a rape has a similar right to dispute his paternity and avoid prosecution by arguing that there is no proof of the kid's conception. Therefore, it is recommended that appropriate adjustments be made in order to include the topic of paternity tests in the scope of the various legislation. The Gujarat High Court noted in *Haribhai Chanabhai Vora v. Keshubhai Haribhai Vora*<sup>6</sup> that no one can be forced to submit himself for a DNA test

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<sup>5</sup>Gautam Kundu v. State of West Bengal, AIR 1993 SC 2259.

<sup>6</sup> Haribhai Chanabhai Vora v. Keshubhai Haribhai Vora., AIR 2005 Guj 157

and that to force a person to undergo a DNA test would amount to interfering with his personal liberty. The Gujarat High Court echoed the aforementioned Supreme Court's opinion in this case. The Supreme Court ruled in *Silvi v. State of Karnataka*<sup>7</sup> that no one can be forced to take a drug test. However, a D.N.A. test can be required of a person. Article 20(3) of the Indian Constitution is not violated.

According to articles 51A(h) and (j) of the Indian Constitution, every citizen has this obligation as a fundamental responsibility "to develop the scientific temper, humanism and the spirit of enquiry and reform" and "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements". Although no particular DNA law has been passed in India, sections 53 and 54 of the 1973 Code of Criminal Procedure (Cr PC) do permit for inferred DNA tests, and these tests are frequently utilised to resolve complicated criminal cases. In accordance with Section 53, a medical professional may examine the suspect at the police officer's request if there are good reasons. Additionally, Section 54 of the Criminal Procedure Code allows the arrested individual to request that the registered medical practitioner examine them to believe that doing so may reveal information about how the crime was committed. By the Amendment Act of 2005, the Cr PC was modified, among other things, by the addition of new section 53-A, which requires a medical professional to examine a person who has been accused of rape. Although Section 53-A only refers to a medical professional's examination of the accused at the police officer's request, the court has greater authority to ensure that justice is served in criminal cases by ordering the police officer to take blood samples from the accused and perform DNA tests in order to conduct additional investigations under Sections 173(8) and 293(4)(e) of the Criminal Procedure Code.

In *Thogorani Alias K. Damajanti v. State of Orissa*<sup>8</sup>, the Orissa High Court According to the court, the sole limitation for issuing a directive to get a sample of the accused's blood for a DNA test is that before issuing such a directive, the court must weigh the public interest against the rights guaranteed by articles 20(3) and 21 of the Indian Constitution when deciding whether to order the gathering of evidence that would support or refute the accusation that the accused committed the alleged crime.

### **III. LEGAL VALIDITY OF NARCO-ANALYSIS TEST**

Scientific and technological breakthroughs have helped the police and anyone else who has been

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<sup>7</sup> *Silvi v. State of Karnataka*, A.I.R. 2010 SC.

<sup>8</sup> *Thogorani Alias K. Damajanti v. State of Orissa*

given permission by the courts to gather evidence to some extent. One such technique involves giving the accused barbiturates and putting them under hypnosis or a sleep-like state.

The Narco-analysis test is based on the principle that a person is able to lie using his imagination and, under the influence of certain barbiturates, this capacity for imagination is blocked or neutralized by leading the person into a semiconscious state. It becomes difficult for the person to lie and his answers would be restricted to facts he is aware of. The FSL Bangalore is the de facto hub for Narco-analysis for various departments across the country. Despite being humane as an alternative to physical torture, this investigative method nonetheless poses important issues about individual rights. Furthermore, an improper dose could kill the defendant or put him or her in a coma. The medicine slows the heart rate, reduces blood pressure, and depresses the central nervous system, putting the accused in a hypnotic trance, making the influence.

The Supreme Court ruled in *Sharma v. Satish*<sup>9</sup> in 1954 that a person might assert exemption from being forced to deliver a self-incriminating testimony if a formal accusation has been made against them. In yet another significant ruling, *Nandani Satpathy v. P.L. Dani*,<sup>10</sup> the Indian Supreme Court expanded the application of Article 20(3) to encompass the "Right to Silence. The court further held that "compelled testimony" must be understood to mean evidence obtained not only through physical threats or violence, but also through psychological torture, pressure from the environment, exhausting interrogations, close proximity, overbearing and intimidatory methods, and similar means. The Fares examination unquestionably falls under the Article's restrictive scope because it does involve forcible entry into the subject's mind. For instance, information obtained following the drug test indicates that the suspect or accused does indeed possess or have knowledge of the subject matter he was questioned about. Despite the fact that the accused has not responded verbally or physically to any intrusion in the body, but the act's motivation and goal are successfully achieved. This is a flagrant and egregious infringement of the protection guaranteed by Article 20(3) of the Indian Constitution. Similar to this "test of violation," it appears that the right to equality protected by Article 14 of the Constitution<sup>11</sup> is violated. "Equality is a dynamic idea with various aspects and dimensions and it cannot be cribbed, cabined, and limited within traditional and theological limitations," according to Bhagwati. According to a positivist, equality is the antithesis of arbitrariness. In actuality, arbitrariness and equality are sworn adversaries; one is associated with the rule of law in a republic, while the other is associated with the whim and caprice of an absolute monarch.

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<sup>9</sup> *Sharma v. Satish*, AIR 1954 SCR 1077

<sup>10</sup> *Nandani Satpathy v. P.L. Dani*, AIR 1977 SC 1025

<sup>11</sup> INDIA CONST. art 14.

When an act is arbitrary, it is implied that it violates Art. 14 since it is inequitable under both political reasoning and constitutional law.<sup>12</sup> Therefore, it is against Article 14 to randomly inject drugs into a suspect. A procedure must incorporate the principles of natural justice in order to be just and fair because "the procedure specified by law needs to be fair, just, and reasonable, it shall not be fanciful, oppressive, or arbitrary."<sup>13</sup>

The justification for the Narco Analysis test is that it is a legitimate and scientific method of getting at the truth. It is the finest alternative to third degree approach and conventional physical torture. The second defence is that the individual submits voluntarily to a narcotics analysis test following a court order, and he must sign a permission form before the test. Due to the theory that a consent form signed by the accused suffices as proof of voluntary disclosure, the justification offered on the basis of consent does not seem to be more appropriate. This is a fallacy since, in cases when a court has ordered a narcotics analysis, the permission form is completely irrelevant because following a court's order is never contingent on the approval of any other party. Even the word "order" suggests the ability to force compliance. The Supreme Court's ruling to halt the drug analysis of K. Venkateshwar Rao in a case involving the Krushi Cooperative Urban Bank<sup>14</sup> in November 2006 represents the most current progress regarding the accused's consent for such study, and it is to be applauded. The court noted that "informed consent" is implied by consent. The person providing this consent must be informed of both his right against incriminating evidence as well as the procedure that will be performed on him and the potential outcomes of that procedure.

Narco analysis test does not violate article 20(3) of the Constitution of India Article 20(3) guarantees 'Right against Self Incrimination'; in general, this doctrine states that "no person, accused of any offence, shall be compelled to be a witness against himself". On analysis of Art. 20(3) of the Constitution of India, it is found to contain the following components:

1. It is a right available to a person 'accused of an offence.'
2. It is a kind of protection against 'compulsion' to be witness on the stand.
3. It serves as defence against the kind of "compulsion" that would cause him to testify against himself.

A person's constitutional rights under Article 20(3) of the Indian Constitution would be violated if they were required to undertake a narco-analysis. Nothing prohibits the accused from using

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<sup>12</sup> EP Royappa v. State of TN, AIR 197 SC 555; RD Shetty v. Airport Authority. AIR 1978 SC 1628.

<sup>13</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 625.

<sup>14</sup> Twenty Second Dr. Ramanadham Memorial Meeting on "Narco Analysis, Thrture and Democratic Rights" conducted by the Peoples' Union of Democratic Rights, p. 12.

the protections afforded to them by numerous laws if any of their legal or fundamental rights are abused when gathering information, i.e. gathering evidence during an inquiry. However, that cannot be an excuse for declining to cooperate with the investigation.<sup>15</sup> The term "compelled testimony" is understood to refer to testimony that was obtained not only through physical threats or violence but also through psychological torture, psychological pressure, environmental coercion, exhausting interrogative proximity, overbearing and intimidating methods, and similar techniques.<sup>16</sup> In the case *Kathi Kalu Oghad*, the Supreme Court determined that the term "compulsion" in this context must be equivalent to the term "duress" under English law. Duress is defined as follows in *Earl Jowitt's Dictionary of English Law*: An act is committed under duress when a man is coerced to perform it by pain, a beating, unlawful detention (which is sometimes referred to as duress in the literal sense), or by the threat of death, serious physical injury, or unlawful detention (sometimes called menace, or duress per mines). Threatening, hitting, or imprisoning a person's wife, parent, or child was also considered to be under duress. The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. The accused is given Sodium Pentothal or Sodium Amytal injections during a narcotics analysis. The accused is then questioned by the current investigating agencies in the presence of qualified medical professionals. No physical force of any kind is applied to the accused.

#### **IV. DNA PROFILING VIS-À-VIS INDIAN EVIDENCE ACT**

In terms of the admission of DNA evidence, section 45 of the Indian Evidence Act, 1872 is more significant than these other clauses. Section 45 addresses the expert's judgement. "When the Court must form an opinion upon a point of foreign law, science, or art, or as to the identity of handwriting (or finger impressions), the opinion upon such point of persons specially skilled in such foreign law, science, or art (or in question as to the identity of handwriting or finger impressions) are relevant facts," the statute states. The reports of specific government scientists are covered by Section 293 of the Criminal Procedure Code. According to Section 293(2), the court may summon and question any such expert regarding the topic of his report if it deems necessary.

The courts have stated that medical evidence is frequently not conclusive and is just an indication of opinion in a number of circumstances. It is insufficient as evidence. However, they

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<sup>15</sup> *Ramchandra Ram Reddy v. State of Maharashtra*, 2004 ALL MR (Cri) 1704. \

<sup>16</sup> *Smt. Selvi and ors. v. State of Kormangla Police Station*, 2004(7) Kar LJ 501.



assert that the forensic science laboratory's and the doctor who performed the post-mortem examination's assessments are trustworthy. It is further noted that the court cannot substitute its own judgement for the doctor's findings unless there is a fundamental flaw in the medical report. In accordance with section 45 of the Indian Evidence Act, there have been a number of convictions in India based on scientific evidence (DNA).

The acceptability of test results in court is now a common practise, and DNA testing has solidified its place in the criminal justice system. India developed an adversarial system for administering justice, and typically, unless in exceptional situations, medical evidence is only allowed when the expert delivers an oral deposition under oath in court. In *Madan Gopal Kakkad v. Naval Dubey*<sup>17</sup>, the Supreme Court ruled that a medical witness who was called in as an expert and whose testimony was based on symptoms discovered during an examination was really just providing advice. The expert witness is required to provide the court with all pertinent materials, including the data that supported his conclusions, and to educate the court on the technical aspects of the case by clarifying scientific jargon so that the court, which is not an expert, may form its own judgement on the materials after giving the expert's opinion due consideration because, once the expert's opinion is accepted, it becomes the expert's opinion rather than the medical officer's.

The Andhra Pradesh High Court ruled in *Patangi Balarama Venkata Ganesh v. State of A. P.*,<sup>18</sup> that the opinion of a DNA expert is admissible in evidence since it is a flawless science. In this instance, the DNA expert testified as follows: "If a person's DNA fingerprint matches that of a sample, the sample has only ever originated from that individual. One in 30 billion people in the world have DNA fingerprints that are identical, excluding identical twins "It implies that a DNA test provides a precise identification. The court noted that it is a very sophisticated science. The Supreme Court exhibited the most reluctance to use DNA evidence to settle the paternity dispute that resulted from a maintenance suit in *Goutam Kundu v. State of West Bengal*.<sup>19</sup> The father in this case denied paternity and wanted a blood grouping test to establish parentage in order to ascertain if the child was eligible for maintenance under Section 125 of the Cr PC.

Application of DNA testing is now well established in developed countries.<sup>20</sup> Numerous instances in India have resulted in verdicts that have either been supported by additional

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<sup>17</sup> *Madan Gopal Kakkad v. Naval Dubey*, (1992) 3 SCC 204.

<sup>18</sup> *Patangi Balarama Venkata Ganesh v. State of A. P.*, (2003) Sri L.J. 4508.

<sup>19</sup> *Goutam Kundu v. State of West Bengal*, (1993) 3 SCC 418.

<sup>20</sup> DNA identification Act which allowed a DNA data bank to be meted and amended the Criminal Code to provide a mechanism for a Judge to order per. ns convicted ix a designated offences to prove blood. buccal or hair samples. from any DNA profiles will be derived) has passed in Canada and Britain has Justice and Public.Order Act.

corroborating evidence or only the results of DNA testing. Although the DNA test is accepted in many nations, the Evidence Act of India has not yet included it. Therefore, it is up to the judges to decide whether or not to accept the DNA testing conducted in accordance with Section 45 of the Indian Evidence Act. In the first paternity case in India to be settled using a fingerprinting test, it was decided that expert testimony was allowed under section 45 of the IEA. Thus, under Section 51 of the IEA, the basis upon which the opinion is formed is also pertinent. The decision was contested in the High Court, but the Hon'ble High Court affirmed it, saying that paternity may be determined only by the findings of the DNA test.

Often questions pertaining to DNA fingerprinting have been raised which create hindrance to investigate agencies if, whether such testing would be regarded as a breach of Article 20(3) of the Indian Constitution, which forbids citizens from offering evidence that could be used against them. In 1995, Chief Justice Jagannath Rao of the Kerala High Court drew attention to this gap in the paternity case's ruling. The phrase "conclusive proof" and "non-access" are used in Section 112 as the only exceptions. Therefore, under the current interpretation of the clause, the only acceptable evidence to establish paternity is lack of access. This was stated in a number of cases that were determined as well as most recently by the Supreme Court in *Kanti Devi v. Poshi Ram*. The case involved DNA evidence, however the Supreme Court rejected the evidence on the grounds that there is no other acceptable evidence to establish paternity other than "non-access."

In the case of *Sadashiv Malikarjun Kheradkar v. Smt. Nandini Sadashiv Kheradkar*<sup>21</sup>, it was conjectured that the Court has the power to direct blood examination but it could not be done as a matter of course or to have a roving enquiry. In criminal and civil matters where it is necessary to prove identification or familial association, DNA profiling provides many advantages over the conventional types of evidence that are admissible in courtrooms. Although circumstantial evidence in criminal cases cannot ever completely replace it, it can supplement it because it can powerfully indicate towards the suspects who may have committed the crime. It is the most reliable way and conclusive evidence available in civil disputes to verify a person's identification and prove or refute pregnancy or paternity of children. For this DNA technology application to function at its optimum and give us accurate and trustworthy findings, optimal practises must be followed. The only way to get a DNA test performed and accepted by the courts in order to receive any remedy in cases of the above-mentioned kind is to request one. In criminal instances, DNA evidence may be admitted by Indian courts if it augments or supports

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<sup>21</sup> *Sadashiv Malikarjun Kheradkar v. Smt. Nandini Sadashiv Kheradkar*, 1995 Cri. L.J. 4090.

other evidence. DNA profiling has already increased the court system's accuracy to a degree that was unimaginable fifty years ago, and it will continue to raise questions about how the justice system functions without technological assistance.

## **V. DNA- LEGISLATION , A PARAMOUNT NEED IN INDIA**

It is pertinent to consider the given the increase in crime and the criminals' growing propensity to destroy any evidence that could be used against them in court, forensic science plays a significant role in the discovery and investigation of crimes, and its use in the process is essential. But with the right use of forensic technology, it is now possible to discover all kinds of serious crimes. Application of DNA technology is successful in paternity/maternity dispute cases, makes it easier to identify rape and murder suspects, and helps identify hardened habitual criminals by maintaining DNA profile records of listed offenders. In the lack of specialised DNA regulations, an investigation officer must deal with such difficulties when conducting a crime investigation. There is no particular law governing the collection of blood, semen, or hair roots, with the exception of Section 53 of the Cr.P.C., 1973, which is insufficient. In the absence of appropriate legislation, an investigating officer has a lot of difficulty collecting these materials from the person of the suspected accused. In India, there is no particular DNA legislation that permits an investigating official to obtain a predetermined volume of blood, sperm, or other biological material for an investigation.

The Indian government made an effort to introduce specific legislation that can formalise the use and application of DNA while keeping all the aforementioned concerns in mind. Indian technology The Bill is still waiting in Parliament, and there hasn't been any further discussion about making it become a law any time soon. India has long recognised the need for technological improvement in crime scene investigation, and while the agencies continue to update their knowledge, it does not seem like enough in light of the tremendous advancements being made throughout the globe. From that standpoint, the researcher analyses the Bill and outlines its advantages and disadvantages.

The independence of the forensic scientific institutions, which directly report to the relevant Home Department and law enforcement agencies, comes first. Lack of independence increases the likelihood of improper handling and tampering with evidence.

The second problem is that the forensic laboratories lack the personnel or even a functional facility. A large number of professionals are needed for thorough investigation, as well as individuals to communicate the investigators' progress and, most crucially, that between the forensic unit and the police.

Thirdly, the police and investigating personnel must have all the necessary tools to manage the crime scene and gather evidence. Currently, because of faulty or even a lack of basic training, those sent to the crime site destroy important evidence that could have been used as proof if it had been gathered by a trained official who would have used the essential information with skill and diligence.

Last but not least, and most critically, India requires specific legislation that can legalise the use of DNA evidence for investigations and ensures that this decision is not exclusively up to the court. All of the aforementioned prohibitions are most likely to be lifted by the creation of a law.

The 2019 DNA Technology (Use and Application) Regulation Bill<sup>22</sup> was initiated and passed in the lower house, however it expired even before it could be introduced to the upper house. As a result of being referred to the Parliamentary Standing Committee, it was reintroduced in July 2019 and is currently waiting in the Lok Sabha. The purpose of the proposed legislation is to "provide for the regulation of use and application of deoxyribonucleic acid 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."

Except for particular specified offences, which are essentially offences punishable with death or imprisonment for a term exceeding seven years, Section 21 of the Bill mandates that the investigating authorities obtain prior consent from the person whose DNA sample is needed. The Bill also specifies in great detail how and where samples can be obtained, including from bodily fluids, clothing, personal and non-intimate bodily fluids, etc.

The most important part of the Bill, the DNA databank, which calls for the formation of national and regional DNA databanks, is covered in Chapter V. The national data bank must receive the information gathered from the regional data bank. In the Indian context, the demand for forensic technology, and particularly DNA technology, in criminal inquiry has grown over time. DNA was discovered in the 20th century, and ever since, it has shown to be one of the most effective discoveries, having a significant impact on modern science and medicine. Currently, it aids in directing both civil and criminal conflicts in India. In India, there are still numerous problems in using DNA evidence in criminal investigations. The right to privacy of the individuals providing samples and allowing for all of their personal information to be accessed by authorities is the most important legal issue that looms in the background of all the technical

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<sup>22</sup> DNA Technology (Use and Application) Regulation Bill, 2019.

issues that the use of DNA evidence faces.

The Supreme Court has declared privacy to be a basic right, and it can only be violated by creating a legal provision that is justified. Complete trust in the Government cannot be placed unless there is a specific law authorising the use of such data, ensuring that the data is secured, and holding the authority having access to such data responsibility for the breach in event of a leak or misuse. The government must make every effort to make its system as exact and effective as the one created in England, a country with extensive experience with DNA technology. No system is perfect, but learning from mistakes always improves the system. India must evaluate the English system's flaws and apply the Bill while taking into account our nation's demographics and other similar aspects. The researcher thinks that implementing the following suggestions would make the Bill function more effectively.

The Bill must include a provision for the legal fraternity members' education since they would play a crucial role in the system. Continuing education for the legal community is likely to contribute towards educating them. Forensic scientific evidence needs to be taught to the judges. Scientific certainty in forensic science must be created, and more research and development in the legal field are required. Once these have been established, even the enactment of a complex statute will guarantee the efficient application of scientific technology and be a huge aid in both civil and criminal investigations. However, arbitrary laws and a lack of scientific temper can worsen systemic problems and jeopardise people's civil rights.

Forensic Science has a great contribution for crime detection and investigation and its application in the crime investigation process is indispensable in view of rising crime in the new millennium. It is the new tendency of the criminals to destroy all sorts of proofs or evidences will be used against them in a criminal trial. But with the which application of forensic technology, detection of all sorts of proper critical crimes have been made possible. Application of DNA technology is successful in paternity/maternity dispute cases, rape and murder cases, DNA technology is also helpful in the identification of habitual hardened criminals, by keeping the DNA profile records of listed offenders. For the purpose of crime investigation, an investigation officer has to face such trouble in absence of specific DNA legislation. For collecting blood sample, semen sample or taking of sample of hair-roots, there is no specific legislation except Section 53 of Cr.P.0 1973 which is not sufficient. An investigating officer faces much trouble regarding the collection of these materials from the person of the suspected accused in absence of a proper legislation. There is no specific DNA legislation in India which authorizes an investigating officer to collect a specified amount of blood or semen etc. for the purpose of investigation. This has been reflected in the current judgment of the Hon'ble Andhra Pradesh

High Court in Sayad Mohd. Ghouse v. Noorunnisa Begam<sup>23</sup>. In this case the Lordships relying on the decision Goutam Kundu v. State of W.B.<sup>24</sup> held that Court cannot compel father to submit himself to DNA Test. Goutam Kundu's case ordered that the DNA test could not be sustained. DNA test is the most useful test in the investigation of crimes also. But it should not be left at the mercy of the other side for his objection or consent.

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<sup>23</sup> Sayad Mohd. Ghouse v. Noorunnisa Begam, 2001 Cr.L.J. 2028.

<sup>24</sup> Goutam Kundu v. State of W.B, AIR 1993 SC 2295.