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DNA Database: Palliating the Road of Criminal Justice

ADITYA GUPTA¹

ABSTRACT

The newborn right to privacy² is a love-child of the judiciary and the fundamental rights created midst the need to protect individual identity. However, like any other fundamental right, it is not immune to the reasonable restrictions that are capable of being imposed by the State³.

With an alarming increase in the rate of crime⁴ and obsolete methods of investigation⁵ adopted by the investigating agencies, there is a strong need to reform the law that assists the courts in administration of justice in a scientific manner.

Through this paper, the researcher analyses the scope of right to privacy vis a vis the obligation of a state to create a DNA Database to aid the investigating agencies and the prosecutorial agencies in securing convictions by palliating the road of criminal justice.

Furthermore the researcher seeks to analyse the legislations passed by a democratic developed nations, namely- the USA, in the field of creating a DNA database.

Keywords: *High Court, Supreme Court, India, USA, DNA Database, Privacy, Due Process, Procedure Established By Law, Reasonable Restrictions, Bill of Rights, Fundamental Rights.*

I. INTRODUCTION

“Technology questions the assumptions which underlie our processes of reasoning. It reshapes the dialogue between citizens and the state. Above all, it tests the limits of the doctrines which democracies have evolved as a shield which preserves the sanctity of the individual.”

- Justice Dr. Dhananjaya Y Chandrachud⁶

The Indian Constitution seeks to strike a balance between the rights of a person as an individual

¹ Author is an Advocate at Bombay High Court, India.

² Justice KS Puttaswamy (Retd.) & Anr. v. Union of India; Writ Petition (Civil) No. 494 of 2012.

³ Article 12, Indian Constitution 1950.

⁴ <https://ncrb.gov.in/sites/default/files/CII%202019%20SNAPSHOTS%20STATES.pdf> as accessed on 11th April 2021.

⁵ https://ncrb.gov.in/sites/default/files/NCRB_Journal_October_2019.pdf as accessed on 11th April 2021.

⁶ Justice KS Puttaswamy (RETD) & ANR v. Union of India & Ors; Writ Petition (Civil) No. 494 of 2012 at p.573.

and the rights of a person as a part of the society⁷. Many a times it is observed that the rights of the society as a whole tend to dominate over the rights of an individual.

Our criminal justice dissipation system is designed to satisfy the larger interest of the society. It seeks to not only punish the guilty, but also prevent the commission of an offence. This can only be achieved by a fair investigation and a competent prosecution.⁸

Instances of prosecutorial incompetency and lapse in investigation are not uncommon⁹.

Despite of adequacy in the statutory frame-work¹⁰, it is observed that there is a lack of scientific temperament¹¹ on the part of the investigating officers that has led to unwarranted acquittals and an increase in the number of innocent under-trials languishing in prisons solely based upon oral testimonies¹², either of the victim or their interested witnesses or circumstantial evidence¹³.

The state on the other hand has ignored its responsibility to provide dedicated centres for forensic research and analysis, let alone create a dedicated DNA Database.

In the light of the aforesaid contentions, the present research paper seeks to address the following issues:

- (a) Need and viability of a dedicated DNA Database in India.
- (b) Area of legal conflict between the fundamental rights and mandatory DNA profiling of citizens.
- (c) A comparative analysis of the legislative thought that has led to the creation statutes establishing DNA Databases, with special emphasis to the drawbacks of the technology.

The present research covers, the need and viability of creating a dedicated DNA database in India and its effect on fundamental rights guaranteed in the Indian Constitution. In order to do complete justice to such a study, it is the fealty of the researcher to do a comparative analysis and understand the practical working of law. However, the present research is not empirical in nature. Thus, the accuracy of the data available to the researcher may be questionable.

⁷ Refer to Part III and Part IV of the Constitution of India, 1950

⁸ Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), Criminal Appeal No. 179 of 2007.

⁹ <https://www.thehindu.com/news/cities/Coimbatore/%E2%80%98Procedural-lapses-affecting-conviction%E2%80%99/article14632992.ece> as accessed on 11th April 2021.

¹⁰ S.53 of Criminal Procedure Code, 1973 enables the investigating agency to carry on DNA profiling of the accused by seeking the assistance of a medical practitioner.

¹¹ Law Commission of India, 239th report on Exeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities.

¹² Ibid para 2.3- Quality of Investigation and Documentation.

¹³ ibid

II. THE INDIAN PERSPECTIVE

This part of the research paper is sub-divided into three parts, namely:

- (a) Understanding the Right to privacy in India and its relationship with criminal justice.
- (b) Statutory Consent and Privacy under the DNA Technology Bill.
- (c) Legislative void in the Criminal Procedure Identification Bill, 2022
- (d) Evidentiary value of DNA profiles

(A) Right to privacy in India and its relationship with criminal justice:

The restricted and compartmentalized interpretation¹⁴ given to Part III of the Indian constitution continued to haunt the liberalised citizens of this country, until very recently where the Supreme Court not only affirmed the existence of a new-found right to ‘privacy’, but also completed the penance of its past misgivings by over-ruling four of its narrowly written verdicts namely- *MP Sharma v. Satish Chandra, District Magistrate, Delhi*¹⁵; *Kharak Singh v. State of Uttar Pradesh*¹⁶; *ADM Jabalpur v. Shivakant Shukla*¹⁷ and *Union of India v. Bhanudas Krishna Gawde*¹⁸.

The expression ‘privacy’ is incapable of a precise meaning. However, the following words of Justice DY Chandrachud shed some light on it- “*Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. Yet, the autonomy of the individual is conditioned by her relationships with the rest of the society*”.¹⁹

It must be noted that ‘*Right to privacy*’ is an inherent part of ‘*Right to life*²⁰.’ The said right can only be taken away by *reasonable, just and fair procedure*²¹ established by the State.

In the sense of criminal justice, right to privacy is practically absent. A loose illustration of this fact lies in the provisions of the Criminal Procedure Code, 1973²². The said provisions must be read in the light of Articles 20 (3)²³ and 21²⁴ of the Indian Constitution, 1950.

¹⁴ AK Gopalan v. State of Madras, AIR 1950 SC 27

¹⁵ (1954) SCR 1077

¹⁶(1964) 1 SCR 322

¹⁷ (1976) 2 SCC 521

¹⁸ (1977) 1 SCC 834

¹⁹Justice KS Puttaswamy (Retd.) and Anr. V. UOI, W.P. (CIVIL) No. 494 of 2012 at page 4.

²⁰ Article 21 of the Indian Constitution, 1950

²¹ Maneka Gandhi v. UOI, AIR 1978 SC 597

²² S.47 – search of the place entered by the person sought to be arrested; S. 51- Search of the arrested person; S. 53- Examination of the accused by a medical officer at the request of a police officer; S.94- Search of place suspected to contain stolen property, forged documents, etc; S.102- Power of police officers to seize certain properties; R/w Chapter xxxv- Irregular proceedings.

²³ Prohibition against self-incrimination.

²⁴ Right to life and personal liberty.

The prohibition against self-incrimination²⁵ has undergone a long overdue change in the manner of its interpretation.

During the initial days, the Supreme Court was faced with a difficulty in determining the true scope of the expression - 'to be a witness against oneself'²⁶. The Court went onto hold that only *testimonial acts* (compulsive speech or compulsive production of things) amounted to being a witness against oneself. This created a confusion in the legal fraternity, because this interpretation was eventually outlawing the most crucial parts of investigation such as- compulsive medical examinations, compulsive recording of fingerprints and compulsive submission to handwriting analysis²⁷, to name a few. The court was quick to retrace its steps in *State of Bombay v. Kathi Kalu Oghad*²⁸, by holding that to be a 'witness against oneself' would only include a prohibition upon the 'communication of a relevant fact or any knowledge thereof.' Hence, giving medical samples, fingerprints and handwriting samples does not amount to a prohibition against self incrimination because the said evidence wasn't within the 'control or volition' of the accused and when taken independently or in its unmatched form, they were 'unchangeable or innocuous' by the accused person's volition.

However, the transformative role²⁹ played by the judiciary becomes evident from the change in its interpretation. The Supreme Court went from- 'the state is a protector of the citizens and its primary goal is to prevent crime and punish the offenders' to 'the State can't cross certain lines even in the detection of crime.'³⁰ Rejecting the idea that Narco-analysis, Brain Electrical Activation Profile (BEAP) and Poly-graph tests were a part of enabling provisions of S.53 of Criminal Procedure Code, the Supreme Court categorically held that 'bodily-substances' are different from 'testimonial responses' and thus the latter cannot be protected under S.53. The aforesaid tests take away a person's volition and if made compulsory, she shall no longer have a choice or control over her sense, let alone her responses.³¹ Thus, the said tests, if done involuntarily, would violate a person's *right to mental privacy*³².

Thus, from the aforesaid discussion it becomes clear that though the Indian criminal system need not recognise a person's right to bodily privacy. However, it must respect a person's right to mental privacy.

²⁵ Article 20 (3), Indian Constitution 1950

²⁶ MP Sharma v. Satish Chandra, District Magistrate, Delhi; (1954) SCR 1077

²⁷ S.73 of the Indian Evidence Act, 1872

²⁸ (1962) 3 SCR 10

²⁹ Selvi v. State of Karnataka, (2010) 7 SCC 263

³⁰ Herbert Packer, 'Two Models of Criminal Process' (1964) 113 University of Pennsylvania Law Review 10.

³¹ Selvi v. State of Karnataka, (2010) 7 SCC 263 ¶185

³² *ibid* ¶224-226

(B) Statutory Consent and Privacy under the DNA Technology Bill:

The DNA Technology Bill was passed by the Lok Sabha (Lower House of the Indian Parliament) on 8th January 2019. The primary object behind passing the said Bill is six-folds, namely: ‘To use Deoxyribonucleic Acid (DNA) technology for the purpose of identifying’³³:

(i) ‘Victims of offences’;	(ii) ‘Offenders’;
(iii) ‘Under-trials’;	(iv) ‘Suspects’;
(v) ‘Missing Persons’;	(vi) ‘Unknown Deceased Persons’.

The Bill seeks to establish a DNA Regulatory Board³⁴ and a DNA Data Bank³⁵. It also makes provisions for accreditation of DNA laboratories³⁶ and their obligations³⁷.

A person accused of a specified offence³⁸ must mandatorily submit his samples for the purpose of DNA analysis and storage in DNA Banks. However, a person who is accused of any other kind of offence³⁹ has a **right to withhold consent for such analysis and storage**. Consent must be procured in writing⁴⁰. In case a person refuses to give consent for DNA sample collection, the investigating authorities can approach a magistrate and the latter may issue appropriate directions based upon the facts and circumstances of each case.⁴¹

In case the person whose consent has to be taken is a minor, the authorities can take the written consent from the parent or the guardian of such a minor and in case of refusal on the part of the parent or the guardian, the investigating authorities can approach the Magistrate.⁴²

The Bill further seeks to enable the investigating agencies and forensic experts in taking DNA samples from intimate organs like- buttocks, breasts, genital organs and anal regions. They are also allowed to video-graph/ photograph/ take casts of the said regions in case of any wounds or injuries observed thereon.⁴³

The accused person can, in case of contamination of samples, move to the court for issuance

³³ Preamble to the DNA Technology (Use and Application) Regulation Bill, 2019

³⁴ Ibid Chapter II

³⁵ Ibid chapter V

³⁶ Ibid Chapter III

³⁷ Ibid Chapter IV

³⁸ Explanation to S.21 of the Bill defines ‘specified offences’ as offences punishable with imprisonment for a term exceeding 7 years or death.

³⁹ Not being a specified offence.

⁴⁰ Ibid S.21 (1)

⁴¹ Ibid S.21 (2) and (3)

⁴² Ibid S.22 (2)

⁴³ Ibid S.23

of directions for re-examination.⁴⁴

The information once entered into the crime scene index⁴⁵ can't be removed. However, the Director of Nation DNA Databank can remove DNA profiles of accused or under-trials from the data bank, upon the receipt of a court order or after the filing of the police report. In case of a person not accused of any offence, but whose DNA profile has been entered into the DNA Data Bank, he must send a written request to the director for the removal of the said information. Parents and guardians of disabled or minor persons can also make such a request.⁴⁶

The stored DNA profiles can only be used for the purpose of identification of persons and for judicial proceedings.⁴⁷

The Bill also seeks to punish any unauthorised sharing of DNA profiles with a maximum imprisonment for 3 years and fine up-to Rupees One Lac.⁴⁸

From the aforesaid discussion it is clear that a person's right to *bodily privacy/ physical privacy* can be curtailed by judicial and executive control.

(C) Legislative void in the Criminal Procedure Identification Bill, 2022

The Criminal Procedure Identification Bill, 2022; as passed by the Parliament⁴⁹ is the stepping stone towards harmonising the criminal justice system and the biological sciences. This Bill is spread across 10 sections and seeks to repeal a 102 years old statute called as the 'Identification of Prisoners Act, 1920'⁵⁰. Prior to exploring the legislative void, it is incumbent upon us to explore the provisions of the law. The same are discussed as under:

The primary intention of the legislature is "to authorise for taking measurements" of "convicts and other persons" for the purposes of "identification and investigation" in criminal matters and to preserve records thereof.⁵¹

The expression "measurement"⁵² has a very broad connotation, it includes not only finger-impresions, palm-print impresions, foot-print impresions, photographs, iris and retina scan,

⁴⁴ Ibid S.24

⁴⁵ Ibid S.2 (iv)

⁴⁶ Ibid S.31

⁴⁷ Ibid S.34

⁴⁸ Both the information supplier and the recipient will be held accountable by virtue of Ss. 45 and 46. Special penalties are also prescribed for- unlawful access to DNA databases, tempering or contaminating biological samples and Directors, managers, secretary and other officers of the company or institutions can be held accountable for the unlawful acts of the said companies or institutions. (S.47-S.51).

⁴⁹ Passed by the Lok Sabha (Lower House) on 4th April 2022 and by the Rajya Sabha (Upper House) on 6th April 2022.

⁵⁰ S.10 (1) of the Criminal Identification Bill, 2022.

⁵¹ Statement of Objects and Reasons as appended with the Bill.

⁵² Section 2 (1) (b) of the 2022 Bill.

physical, biological samples and their analysis, but also “behavioural attributes” including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973.

The expression “behavioural attributes” is not defined in the Bill and is thus ambiguous. The legislature may be subtly trying to give a new life to Lombro’s theory of “born criminals”. Substantial research indicates that criminals do possess certain behavioural attributes⁵³ that distinguishes them from the ordinary class of citizens⁵⁴. However, it is difficult to ascertain what kind of behaviours are exclusively responsible for making a criminal. The legislature ought to have taken the sociological factors, literacy, income, gender and other parameters into consideration prior to restricting itself to behaviour attributes.⁵⁵

The Bill does not seek to differentiate between convicts, detenus and arrestees. It also covers persons against whom the District Magistrate has instituted Chapter proceedings under Criminal Procedure Code, 1973.⁵⁶

In cases of offences against women and children, it is mandatory for the accused person to provide their measurements.⁵⁷

The National Crime Records Bureau (NCRB) has been bestowed with the responsibility for collection, storage and dissemination of the measurements collected at the National Level. However, the Bill has given independent autonomy to the states to decide upon its storage facility.⁵⁸ The records once taken, will be stored in the system for a total period of 75 years!⁵⁹

The records of an Acquitted or a discharged person, shall be deleted from the system, unless the Court or the Magistrate otherwise directs.⁶⁰ *This protection is unavailable to a person who is not a suspect or an under trial, but has still been ordered to give his/her measurements in pursuance of a court order or a direction from the Magistrate U/s. 5 of the Bill.*

Resistance or refusal to give the measurements will amount to an offence U/s.186⁶¹ of the

⁵³ Tharshini, N K et al. “The Link between Individual Personality Traits and Criminality: A Systematic Review.” *International journal of environmental research and public health* vol. 18,16 8663. 17 Aug. 2021, doi:10.3390/ijerph18168663

⁵⁴ Sinha, Sudhinta. “Personality correlates of criminals: A comparative study between normal controls and criminals.” *Industrial psychiatry journal* vol. 25,1 (2016): 41-46. doi:10.4103/0972-6748.196058

⁵⁵ <https://www.sascv.org/ijejs/vermaandkumar.html> as accessed on 16th April 2022

⁵⁶ Section 3 of the 2022 Bill.

⁵⁷ Provisio to S.3 of the 2022 Bill.

⁵⁸ Section 4 (1) of the 2022 Bill.

⁵⁹ Section 4 (2) of the 2022 Bill.

⁶⁰ Provision to Section 4 (2) of the 2022 Bill

⁶¹ Punishable with 3 months of imprisonment or fine or both.

Indian Penal Code.⁶²

Section 7 expressly bars any suit or proceeding against any person acting in “good faith” under the Act. Section 8 gives power to the central Government or the State Government (as the case may be) to make rules consistent with the provisions of the Act and lay the same before the appropriate legislature. Section 9 deals with the power of the Central Government to remove difficulties under the Act.

This legislation falls foul upon the constitution on the following grounds:

- (i) Wide powers have been bestowed upon the Executive Magistrate to direct collection of measurements for the purpose of chapter proceedings.
- (ii) The manner in which the samples are to be collected and stored have been not clearly demarcated. The Executive arm of the Government has wide discretion to make rules in this behalf.
- (iii) Inability of the subordinate judiciary to order deletion of data collected from Acquits, suspects and discharged persons.
- (iv) No protection is available to a person who is neither a suspect nor an under-trial, but whose data has been collected in pursuance of a court order or a direction issued by the Executive magistrate. This is a direct attack on a person’s right to privacy.

(D) Evidentiary value of DNA profiles

Under the scheme of the Indian Evidence Act, 1872; the Indian courts enjoy a wide range of discretion while deciding what constitutes as a relevant fact and a fact-in-issue⁶³. The parties to a legal dispute can lead evidence only in support or in negation of facts that are in issue or are relevant as per the rules of relevancy⁶⁴.

The courts are at a liberty to take into consideration⁶⁵ any expert evidence⁶⁵ founded on reasonable grounds⁶⁶ and consider it to be relevant.

Based upon this analogy, it is safe to assume that opinions of forensic experts, upon the comparison of DNA samples and DNA Profiles, would be considered as relevant.

The prosecution does not need an enabling provision to resolve to DNA analysis of the accused persons, in order to bring out the truth.⁶⁷

⁶² S.6 (2) of the 2022 Bill.

⁶³ Indian Evidence Act, 1972 refer S.3

⁶⁴ Ibid S.5- S.55 of the Act enumerates the rules of relevancy.

⁶⁵ Ibid S.45 R/w S.46

⁶⁶ Ibid S.51

⁶⁷ Krishna Kumar Malik v. State of Haryana; (2011) 7 SCC 130

The accused can be directed to undergo medical examination such as potency tests, ED tests, etc. Such examinations are not violative of Article 20 (3) and Article 21 of the Indian Constitution.⁶⁸ In case the accused refuses to submit samples for DNA Analysis, the courts are at a liberty to draw adverse inferences.⁶⁹

Thus, from the aforesaid discussion it is evident that the Courts do have an authority to not only order DNA profiling of the accused, but also take the expert testimony and the test results of such analysis into consideration while tendering its judgments.

III. THE USA PERSPECTIVE

This part of the research paper is further divided into 3 aspects:

- (a) Legislative Backdrop.
- (b) Privacy and CODIS
- (c) Judicial Pronouncements.

(A) Legislative Backdrop

The legislative history of creation of DNA database and its use in the criminal justice system can be traced back to the late 1994. With the advent of the *DNA Identification Act, 1994* (hereinafter referred to as the 1994 Act), the Federal Bureau of Investigation (FBI) has been authorised to create a Combined DNA Index System (CODIS). The said system was setup to assist the FBI in maintaining a criminal justice database and facilitating parallel operations of different soft-wares. Another database that is a part of the CODIS is the National DNA Index System (NDIS), the latter helps in keeping a record of DNA profiles contributed from the Federal, State and local forensic laboratories. The primary aim was to CODIS was to index the Human DNA into 6 categories viz: Legally Convicted Offenders, Missing Persons, Relatives of Missing Persons, Unidentified Human Remains, Population Database and Forensic Unknowns. The director of FBI was also empowered to enforce quality standards across the laboratories run in different states.

The 1994 Act was amended by the *DNA Backlog Elimination Act, 2000* (hereinafter referred to as the 2000 Act). This legislation created a Federal Convicted Offender (FCO) Program⁷⁰. The sole purpose of this program was to procure DNA profiles of convicted offenders⁷¹ and

⁶⁸ Naveen Krishna Bothireddy v. State of Telangana; 2017 (1) ALT (CrI.) 422 (AP)

⁶⁹ S. 114 of the Indian Evidence Act, 1872 R/w Thogorani @K Damyanti v. State of Orissa and Ors., 2004 Cri. LJ 4003; Sulabai v. Jagannath &Anr; 1972 Cr.LJ 1392

⁷⁰ Later on referred to as the Federal DNA Database Unit (FDDU).

⁷¹ Both at the federal level and within the district of Columbia.

offenders released on probation⁷². The same was to be uploaded on the NDIS. Laboratories were now allowed to expunge the DNA profiles of those persons who had managed to overturn their convictions.

By the virtue of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, 2001* (US Patriot Act, 2001.), the 2000 Act was amended to bring offences of terrorism and any crime of violence within the ambit of DNA profiling.

The *Justice for All Act, 2004* (hereinafter referred to as the 2004 Act), ensures that the laboratories used for DNA profiling and sample collection are duly accredited by the Laboratory Accreditation Board or the American Society of Crime Laboratory.

The *DNA Fingerprint Act, 2005* (hereinafter referred to as the 2005 Act), enabled the authorities to collect DNA samples from the persons (including non-citizens) who have been arrested or detained under the authority of the US government. Laboratories were allowed to expunge the names of those who have either been acquitted or against whom the charges have been dropped.

Parallely, a National Sex Offender Registry was setup⁷³ and a retrospective collection of DNA samples was allowed from previously convicted sexual offenders.

(B) Privacy and CODIS

Ordinarily, the forensic experts of the investigating agencies screen the crime scene to procure biological material. DNA, from the material so procured, is put into CODIS and then the software is allowed to search the entire criminal databases (consisting of DNA records of former convicts and arrestees) for any potential matches. Once a match is obtained (offender hit), it is verified and the investigating authorities are duly informed. The authorities are now at a liberty to pursue a court order authorising collection of known biological samples from the suspected offenders. There may be chances where the DNA samples might match with another sample obtained at a different crime scene. Such a match is called as a 'Forensic hit'.⁷⁴

It must be noted that personal information of a person is not stored in CODIS. However, it may store date of birth in case of missing persons.

The kind of offences for which a DNA sample can be taken from the Arrestee or the Convict,

⁷² At the federal level only.

⁷³ Vide Adam Walsh Child Protection and Safety Act, 2005

⁷⁴ www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet as accessed on 9th November 2021

varies from state to state.⁷⁵

(C) Judicial Pronouncements.

The US Supreme Court and the Court of Appeals through various decisions have helped in strengthening the process of investigation and ensured that the Fourth Amendment Rights of the citizens are duly protected. Few of the observations are reproduced as follows:

(a) The officials making an arrest can take DNA samples of the arrestee in order to facilitate further investigation. The said collection, even-though compulsive, will not be violative of the fourth amendment right.⁷⁶

(b) The Courts must have due regards to the kind of procedure adopted for procuring and testing DNA samples, the nature of the evidence, whether it is probative or prejudicial, whether the test results help in conclusively determine the identity of the perpetrator ruling out any kind of reasonable doubt.⁷⁷

(c) The courts have also laid great emphasis upon applying only well established and recognised medical procedure that has been subjected to peer reviewed by experts working in the field of DNA Analysis.⁷⁸

From the above discussion it may appear that USA has created a well-organized database that is not only capable of tracking offenders, but also in preventing innocent conviction.

However, we must not forget that the soft-wares can be used for racial profiling of African Americans and with an increase in the number of samples or data available in the system, the chances of wrongful convictions would increase on account of DNA Fallibility on racial lines.⁷⁹

Another troubling point is the part of familial search in case of a partial match of the DNA. Say for example, if the DNA procured from the crime scene is a partial match to one of the convicts, all his family members would be treated as suspects and subjected to a mandatory DNA profiling. Their records would then be entered into the database.

IV. CONCLUSION AND SUGGESTIONS

India may be technologically proceeding in the right direction. However, its implementation is not devoid of stereotyping. The fact that our criminal justice system is not socio-economically

⁷⁵ www.ojp.usdoj.gov/njj as accessed on 9th November 2021

⁷⁶ *Maryland v. King*; 133 S. Ct. 1958 (2013)

⁷⁷ *US v. Matthew Sylvester Two Bulls*, 918 F2D 56

⁷⁸ *Daubert v. Merrell Dow Pharmaceuticals*; 509 U.S. 579 (1993)

⁷⁹ Sheldon Krinsky & Tania Simoncelli, *Genetic Justice: DNA Data Banks, Criminal investigations and Civil Liberties* 153 (New York: Columbia University Press 2011)

sensitive, might result in cornering the people of marginalized sections and restrict their rehabilitation in the future.

The system will treat suspects and convicts on similar footings and there would be a shift in the burden of proof from “innocent until proven guilty beyond reasonable doubt” to “habitual offender until proven innocent beyond reasonable doubt.”

The Supreme Court, in the past, may have shut the door for bodily privacy and given an unfettered authority to the state in relation to the process of biometrical identification⁸⁰. However, it can still develop upon the facet of genetic equality⁸¹ and ensure that there is no executive over-reach so far as the liberty and spatial privacy of the citizens is concerned.

Another crucial difference in the American and the Indian jurisprudence, in relation to DNA Data Base, is the storage of personal information. The American law forbids the agencies in storing names and other contact details of the Arrestees, Convicts and missing persons (except for the date of birth). There is no identical provision safeguarding the interests of Indian citizens in the Bills passed by the Parliament.

While filling in the gaps of incompetence of our criminal justice system, we must move with caution. The courts must time and again ensure that we aren't truly applying the traditional ‘theory of born criminal’⁸² with a modernised touch.

⁸⁰ Justice K.S. Puttaswamy (RETD.) and Anr. V. UOI and Ors., Writ Petition (CIVIL) No. 494 of 2012

⁸¹ United India Insurance Co. Ltd. V. Jai Prakash Tayal, RFA 610/2016 (Delhi High Court).

⁸² Lombroso's theory of Anthropological Criminology.