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GENETIC PRIVACY- AN ANALYSIS OF LEGISLATIVE ENDEAVOURS

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ABSTRACT

Primary evidence is one of the pillars of the Criminal Justice Administration upon which the conviction and acquittal can solely depend. If this primary evidence is in the form of a bodily fluid, hair, fingerprint, nail, saliva etc. it can ascertain the culpability beyond a reasonable doubt. It is pertinent to mention here that our constitution provides a safeguard to the accused in the manner of fundamental rights. This "right" found its nexus in the ever-growing ever-evolving right to life and personal liberty, which very recently was a matter of determination in the Supreme Court by the issue of the right to privacy. The Puttaswamy judgment recognizes multiple facets of the right to privacy and within it the right to preserve "personal information". It recognizes "personal information" as "data" that should be protected by the State and not misused as means of state surveillance. With this affirmation of data, DNA is genetic data, the Personal Data Protection Bill 2018 and another in 2019, which is the new initiative by State to strengthen the already existing data protection regime. A bare reading of the provisions of this bill can be dubbed as ambiguous and confusing to say the least and recognition to the fact that DNA is "Data" is absent. A careful and thorough reading of the bills is required to further analyze in depth the frontiers of DNA privacy in reference to the stakeholders in the criminal justice system.

On the same lines, the Criminal (Procedure) Identification Bill was recently introduced in the lower house all set to repeal the Identification of Prisoners Act 1920. The objective with which this bill is introduced is to quote-unquote expand the definitions of persons whose measurements can be recorded and stored by the law enforcement agencies as admissible evidence and to subsequently arrive to the conclusion of incarceration. The Criminal Procedure (Identification) Bill seeks to achieve high conviction rates as it boastfully states in its draft.

This paper shall deal with the critical analysis of the provisions of the DNA Technology (Use and Application) Bill 2019, the Data Protection Bill (pertaining to genetic data only) and the newest edition to this list the Criminal Procedure (Identification) Act 2022.

Keywords: Privacy, DNA, Personal Information, Data

1. INTRODUCTION

HISTORICAL BACKGROUND LEADING TO THIS BILL

DNA Evidence was first accepted in India in 1985, but it was not until this Bill was drafted that an initiative had risen to regulate the use of DNA technology for criminal investigation. Before this Bill there had been several initiatives were taken to draft legislations that incorporated the use of DNA technology. The Department of Biotechnology set up the DNA Profiling Advisory Committee for drafting a bill centered on DNA profiling in 2006 which would eventually be called the Human DNA Profiling Bill, 2007. This draft bill was to include DNA fingerprinting and diagnostics too but it never saw the light of day in the Parliament because it was criticized on the grounds that it did not address privacy concerns, which as it happens, still is an issue at large. In 2013, the Department of Biotechnology set up another expert committee to reiterate on the drawbacks of the 2007 draft bill and to finalize the text of the bill.

Two years later, the government planned to table this bill again in the lower house but due to increasing activism on data protection and the on-going *Justice K. S. Puttaswamy(Retd.) and Anr. vs Union of India and Ors.*[1] case put a hault on it. Subsequently in 2016, the Use and Regulation of DNA based technology in Civil and Criminal Proceedings, Identification of Missing Persons and Human Remains Bill was listed for introduction, consideration and passing but was met with the same fate as the draft bill in 2015.

The critiques and activists raised same questions of how the bill infringes the privacy of the persons who'd be subjected to this bill be it under-trials, accused persons etc. There were also concerns about maintaining the credibility of the data collected and how it is stored, the safeguard for elimination of contamination, theft and possible corrosion of the sample to name a few.

In 2018, the Law Commission of India in its 271st report drafted the bill titled DNA Based Technology (Use and Regulation) Bill 2017, but it was also criticized time and again by the overarching privacy concerns and wonderfully so this bill was drafted a month before the *Puttaswamy*[2]judgment came to be. Since then nothing has been changed in this bill and neither in the 2019 bill to accommodate the privacy guidelines as per the said judgment. [3]

CRTIQUE OF THE BILL

The DNA Technology (Use and Application) Regulation Bill 2019 aims at using the DNA technology in establishing the identity of a person. And that's about it, at a preliminary glance. In depth reading differs from the preamble of the bill. Chapters VI and VII of the Bill deal with "protection of information" and "offences and penalties" respectively. Under the head of chapter VI, Sections 32 to 38 incorporates provisions to ensure the protection of the DNA samples and profiles. These sections although seek to protect information but are highly inadequate in affording this protection as the wordings of these provisions only impose a suggestive duty rather than a procedure as to how it shall be done. Section 32 and 33 talk only of what is expected out of the authorities dealing in these samples and fails to lay down specific guidelines for the protection of information.

Under Section 34, is where we find the "alternate" purpose of this Bill that is absent from its preamble. This section states that the DNA profiles, DNA samples and all information relating to them shall be readily available for *other* purposes such as –

- Admission of evidence at trial
- Facilitating criminal investigations by identification and providing evidence to the prosecution
- And any other purpose as may be prescribed by the regulations

These purposes that are crucial to the safety and privacy of an individual's personal information are not highlighted as the objective of the bill but is clearly within the ambit of the "use" of the DNA samples. There is ambiguity as to how these aforementioned purposes shall be carried out and whether there exists a safety net for the individual who's DNA is being used. Sub-section (f) of Section 34 gives a wide power to the State to justify any purpose of the use of the DNA.

Sections 35 to 37 discuss the Access of information that is stored in various indexes and DNA Data Banks. Synonymous to the wordings of the previous sections, these sections also impose duty on the people that the Director deems appropriate to have access to information, which is contradictory since it is the Director of the Regulatory Board who is also the in charge of the DNA Data Banks.

Chapter VIII of the Bill titled "Offences and Penalties" penalizes unauthorized use of the DNA samples. Under Section 45, any person either an employee of the DNA Data bank or otherwise has in his possession the DNA sample and profile of a person who's information was to be secured by the DNA Data bank shall be liable to imprisonment for three years or with 1 lakh rupees fine or both. Section 45 penalizes the unauthorized obtaining of DNA information by any other person not mentioned in section 46 and similarly any person, who "uses" this unauthorized DNA sample which is obtained under section 47, shall face the same penalty as in section 45.

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[1]K S Puttaswamy v. Union of India [2017] 10 SCC 1 (Supreme Court), [169].

[2]*Puttaswamy* (n 1).

[3] Dr. Shashi Tharoor on 'The DNA Technology (Use and Application) Regulation Bill, 2018',available at -<https://www.youtube.com/watch?v=ifO2nlY_2QY>, accessed 26th March 2020.

These sections under Chapter VIII give the penalties of the nature of "contravention of the provisions of this act". They do not prescribe how these shall be prevented in the first place.

This 2019 Bill is laughing stock in the context that it is so insufficient. This bill is not novelty, as has already been aforementioned, and is an attempt by the state to affirm its power over the citizens in the name of public interest. The bill fails to mention what exact information would be extracted to generate a DNA profile of an individual, meaning that there is no limitation on what part of a person's DNA would be used in what situation depending upon for what purpose it is extracted has not been discussed in the bill. For the sake of brevity, for the identification of missing or deceased persons, only parts of DNA need to be matched with and when there is a crime scene investigation where on forensic analysis it is revealed that there are multiple samples of multiple individuals and there needs to be a comparison between two or more, the Bill is silent. This will make a large population of people susceptible to profiling based on the matching characteristics of their DNA with the ones found in an investigation. And to everyone's horror these DNA profiles can be misused for surveillance or even by private entities to pursue blackmailing and for perpetrating crimes by planting DNA evidence to falsely accuse someone. The preamble of this bill also lays down to create DNA profiles for determining pedigree of an individual, his immigration and emigration status, which is a blatant abuse of power and infringement of privacy in the highest manner.

The whole idea behind the objection of the AADHAAR scheme by the government was that it was creating an imbalanced power regime between the State and the citizens. Justice Chandrachud in the *Puttaswamy*[4]judgment says that liberty is in having the freedom of choice, and choice means a choice of preferences, in the privacy of mind. This is to establish that the State already dictates a lot of our lives and our choices, there needs to be a bar somewhere where "we the people" draw the line at State surveillance, if not on everything then in the least our own body and mind.

The DNA Bill's objective lays down that it seeks to identify five categories of persons namely, missing persons, victims, offenders, under trials and unknown deceased persons. It goes on to say in its preamble that the use of DNA technology will only be restricted to the offences mentioned in the Schedule of the Bill which include all the offences under IPC and for some civil matters such as parentage disputes. It then goes on to explain how the collection of the DNA will take place and what shall be the procedure that will be employed in DNA profiling.

One of the most flawed observations in this bill is that it is silent on "effective consent". This bills walks on such shaky grounds, that it doesn't even define the meaning and ambit of the term "consent". By leaving the term "consent" undefined, it opens grounds for uninformed and unambiguous consent.

It says that the bodily substances would be collected by investigating authorities with prior informed consent. For arrested persons, the written consent has to obtained if the person has been accused of an offence is punishable with up to seven years imprisonment. On the other hand if the punishment for the offence exceeds seven years imprisonment or to death, then consent is immaterial. Further, if the person is a victim, or relative of a missing person, or a minor or disabled person, the authorities are required to obtain the written consent of such victim, or relative, or parent or guardian of the minor or disabled person. If consent is not given in these cases, the authorities can approach a Magistrate who may order the taking of bodily substances of such persons.

This aforementioned provision under Section 21 and 22 of the Bill, it substantially waters down the real essence of consent by allowing the Magistrate to override the refusal of consent by any arrested person or a refusal of a guardian on behalf of a minor. There are no guiding factors mentioned in this bill to either limit or prescribe the extent of jurisdiction of powers of the Magistrate.

It fails to mention what are the rights of person in cases of revocation and deletion of their DNA profiles, once it has fulfilled the purpose for which it was collected, not also to the individuals who had voluntarily submitted themselves to DNA profiling under Section 22 of the Bill. Also, the bill does not provide for provision for informing individuals about the details of the collection and usage of his or her DNA. The bill even goes on to say that it will indefinitely hold the DNA in the DNA data banks of the people who are the victims of the crime. It is pertinent to mention here that in case of missing persons, if a person is presumed dead for a period of more than seven years, the law presumes him/her dead.[5] So it is obviously contrary to the objective of keeping a "legally dead" person's DNA indefinitely, unless the State has other ulterior motives in mind to appropriate the DNA for incriminating his relatives which is to state the obvious but

[4]*Puttaswamy* (n 1).

[5]Indian Evidence Act 1872 (Act No. 1 of 1872) s 108, Hindu Marriage Act 1955 (Act No. 25 of 1955) s 13 (1) (vii)

does make one wonder why'd the state want an over looming power of a person's most private piece of existence. After the *Puttaswamy*[6] judgment the Bill should have given the right to individuals to retain back their DNA from the State after its purpose is fulfilled.

Meaning that wherever you go, whatever you do, from coughing on the side of the road to getting a haircut, if you leave traces of your DNA, the State shall appropriate it and not even inform you. There is absolutely no directions or guidelines that either define or curb the powers of the DNA data banks and laboratories. The few safeguards that the Bill does mention are on the DNA collected from the "body of the person". If the DNA collected from otherwise like scene of the crime, clothing, other sources, the DNA labs can store it without informing the person that their DNA has been collected by an authority of the State, which gives them a very large quantum of DNA. In the absence of a prohibition to store the DNA and on the obligation to destroy the DNA, the DNA laboratories can create their own data banks with no supervision from the government or any government oversight.

Section 31 sub-section (3) of the Bill mentions that persons who is neither an offender nor a suspect or an undertrial, but whose DNA profile is entered in the crime scene index or missing persons' index of the DNA Data Bank, for removal of his DNA profile there from, remove the DNA profile of such person from DNA Data Bank under intimation to the person concerned, in such manner as may be specified by regulations. In other words, innocent persons, who is unaware that his DNA is stored in DNA Data bank need to put in a written request to get his DNA removed from the Data bank or else it would stay there for eternity. This is an impossible burden that the bill imposes on the people while letting the DNA Labs misuse the DNA of innocent persons, hence again establishing, a blatant infringement of the right to privacy, probably in the widest possible sense.

After the Supreme Court's judgment in affirming the right to privacy it has become very apparent that privacy safeguards need to be checked before this legislation is passed. The Bill under Chapters II, III and V, talks about setting up of National and Regional DNA Data Banks for every state or two or more states, setting up DNA Regulatory Board to ensure compliance to privacy safeguard standards. Which seems like a step in the right direction, but it most certainly is not. Ironically, the members or the chairs of these regulatory boards and data banks are the investigating officers, heads of investigating agencies and heads of the DNA labs against whom the safeguard needs to be there, to keep a check on them, hence creating a conflict of interest in the way that the regulators will be regulating themselves. Instead of comprising the Regulatory board with outside experts, forensic scientists, scholars in the field of DNA Technology etc, the Bill empowers the targets of these regulations the right to regulate themselves.

Now that the provisions have been under scrutiny, the practical difficulties need to be addressed too, such as; forensic evidence is fragile and very susceptible to contamination. Henceforth it was not held to be a reliable piece of evidence early on. But one major concern that the bill doesn't address is that the DNA samples of the investigating officer or agency could easily be mixed up or mistaken for that of the accused or suspect, and there's no safeguard to prevent this in the bill. This could be rectified by having an "elimination index" wherein all the officers investigating submit their samples for the process of ruling them out during the course of the determination of the guilt of the accused, although there isn't an index in the Bill nor does it speak of anything of the sort. The bill mentions 5 categories of persons it seeks to identify using the DNA technology and creates an index for the suspects, under-trials and offenders of whom they can get DNA samples without their consent which is a whole other can of worms that violate personal information.[7]

This also raises more important concerns which may crop up during the indictment of accused on trial. There is absolutely no mention of any sort of obligatory function of the law enforcement agencies during the course of the DNA sample collection. The DNA samples are such important, delicate and volatile piece of evidence that there needs to be an effective mechanism in place to ensure a trusted chain of custody of DNA samples, their reliable analysis, proper use of these samples with a method of expert evidence. These samples will prove very important in the final process of judicial pronouncements and in the absence of these safeguards, there will be perpetrating the criminal justice system. [8]

The DNA Bill's objectives in the preamble also mentions that State shall link the DNA profiles to Aadhar Database only goes further to affirm that this Bill is more harm than good. The way the clauses are open-ended in their drafting, the absence of procedural safeguards gives a very wide powers vested in the instrumentalities of the State proves that this

[6] *Puttaswamy* (n 1).

[7] *Puttaswamy* (n 1).

[8] *Ibid.*

fails to abide by the guidelines of the privacy enunciated by the Supreme Court.[9] To say the least- Privacy should be maintained robustly otherwise Biological Data Breaching can lead to gargantuan atrocities to the mankind.

THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022- AN ANALYSIS[10]

The Identification of Prisoners Act was passed by the colonial British government in 1920. It was an attempt by the British to expand control by expanding the scope of surveillance. It authorized law-enforcement authorities to take and store photographs, fingerprints, and footprint impressions of convicted (and, in limited cases, non-convicted) persons, and made provisions for their storage.[11]

It is therefore unsettling that the government has enacted this Act which is even more archaic in its objective and aims at collecting even more personal data than the original colonial legislation. The Criminal Procedure (Identification) Act, 2022 has repealed the Identification of Prisoner's Act, 1920 and aims at collection of what it terms as "measurements" from certain classes of persons, along with it discusses about the processing, storage, preservation, dissemination and destruction and staying true to its name, it also aims to use these measurements for investigation in criminal proceedings ultimately for crime prevention. This Act now includes- fingerprints, palm-prints, footprints, photographs, retinal scan, behavioral attributes such as heart rate, handwriting and signatures etc are in the list of measurements. Other than these at the cursory reading, it does all more. It has three-fold stated objectives. They are

It targets at enlarging the frontiers of the law in relation to the persons who have been arrested of any offence. The unfettered powers of the police in matters of arrest are well known and the abuse that ensues. The Act in this respect disregards the privacy of the accused and maybe presumably innocent arrestees in the hands of the State.

The Act mandates the retention of these said "measurements" of a convicted individual for a period of 75 years which essentially is the lifetime of a person and frankly a rather bizarrely long time with the Act offering no explanation for the same.

And the final nail in the coffin, the Act authorizes the National Crime Records Bureau for dissemination of this data with "any law enforcement agency" and the bill states that this is for the purpose of crime prevention and aiding in investigations. But it blatantly ignores that retention of personal data must serve a specific purpose and that purpose only. Stating the purpose of crime prevention and aiding investigations are too vague and too big an umbrella. Not all crime detection and prevention requires sensitive personal data, unless otherwise proven otherwise. Another red flag with this Act is that lack of distinguishing between the offences shall be where the collection and retention of personal data is absolutely necessary.

It is pertinent to mention here that the preamble of this Act has its heart in the right place because it acknowledges that the advancement and advent of technology has aided in resources and tools that are required for crime prevention and hence has helped and further help in conducting faster and better investigations. Having said that, the drawback to this is, that this advancement of technology aids and abets the state surveillance and is arming the State to further their objective for the same.

The Act mentions the extensive list of things it will include in measurements, which raises the question does that include DNA?

Post the 2017 *Puttaswamy* judgement when the wave of privacy arose, a committee headed by Justice B N Srikrishna was setup to deliberate on the matters of data protection and provide for a framework for the same. Even after this committee submitted its report, there is still a lack of robust data protection regime that adequately addresses the privacy concerns of individual's private data and the use thereof. [12]

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[9] *Ibid.*

[10] The Criminal Procedure (Identification) Act, 2022, No. 11 Of 2022

[11] Rethink the Criminal Identification Bill, Gautam Bhatia, <https://www.hindustantimes.com/opinion/rethink-the-criminal-identification-bill-101648995338679.html>, accessed on 4th June 2022

[12] *Bhatia*, n 11.

Dissecting the 4 page legislation, section by section we find that the Magistrate is empowered to order the collection of such measurements and also order to carry this by whatever means necessary. In case of resistance in submitting to such measurement collection, it shall be deemed to be an offence punishable under IPC and be read as obstructing a public servant in doing his duty. Under Section 3, there is an absence of a rational explanation as to the class of persons included from whom the said "measurements" will be taken. These include convict of all offences (future and past), detainees, arrestees and persons that provide security for good behavior. Because Section 3 and Section 5 does away with the requirement of taking measurements from persons that prove that it shall be of no aid in investigation of matter.[13][14]

The Act in its objective states that- "the act is authorized to take measurements of convicts "and other persons" for the purpose of the identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto". Reading this will immediately reveal the problematic part of that sentence that makes "any other person" a potential target.

For instance if someone is arrested for the commission of an offence that is punishable for imprisonment for a period of 6 months, to those that are punishable for a period extending to a longer period than 6 months and lastly to those who might if the situation presents itself will aid the investigation.

The National Crime Records Bureau (NCRB) is vested with the powers of maintaining these records. Further reading of the sections reveal that the Central and State Government is vested with unfettered powers to make rules that shall further the objectives and purposes of this Act.The biggest problem apart from the wide discretionary powers in the hands of the NCRB, the large population it poses a threat to as a potential target is the time period of the retention of the "measurements". The Act states that the data collected as measurements shall be retained for a period of 75 years unless the person is acquitted or discharged of an offence.

COMPARISON OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT WITH THE DNA TECHNOLOGY (USE AND APPLICATION) BILL, 2019.[15]

Currently still at the stage of consideration to become a formal legislation, this bill is still on the table in Parliament. One of the objectives laid down by the bill is to establish a DNA Databank for aiding investigations. This present act in its definition of measurement extends to biological samples and therefore by extension to DNA profiles too, and this is how this Act intrinsically interacts with the DNA Technology (Use and Application) Bill, 2019.

As the analysis of the DNA Bill clearly suggests that it also raises concerns of procedural and privacy matters, it still offers certain safeguards in the form of accreditation of laboratories and procedure thereof for collection and storage of these profiles, a staff that is trained in these scientific expertise, a DNA Regulatory Board, DNA Data banks both at the State and National level and many such hierarchies. The Bill functions outside the purview of the NCRB and their regulatory mechanism is different as aforementioned.[16]

The DNA Bill has a procedure laid down that prescribes taking consent of the arrested persons before their bodily substances can be collected, if a person so refuses to give consent then the officer investigating can approach a Magistrate for the same. The present Act does away with this procedural safeguard and there is only a proviso that exempts some.

Section 5 of the present Act has given unfettered powers in the hands of the Magistrate to order the collection of measurements that are also prescribes in Section 21(3) of the DNA Bill. The stark difference between the two clauses is that in the DNA Bill the Magistrate can only order the collection of these measurements if he so believes that reasonable

[13] Criminal Procedure (Identification) Bill, 2022, <https://prsindia.org/billtrack/the-criminal-procedure-identification-bill-2022>, accessed on 4th June 2022

[14] *Bhatia*, n 11

[15] *Criminal Procedure (Identification) Bill*, n 12.

[16] Research Brief- An Analysis Of The Criminal Procedure (Identification) Bill, 2022, Project 39A, National Law University, Delhi, https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/6246bd9d8ccac84dd8c11f3e/1648803256217/P39A+Brief+-+Criminal+Procedure+%28Identification%29+Bill%2C+2022.pdf,44-59, accessed 3rd June 2022

cause exists but in the present Act invalidates this requirement of reasonable cause and permits collection and retention even if the arrested person resists.[17]

The present Act and its framework that has enlarged roles of the NCRB in collection and dissemination of samples is very shoddy to say the least. There is an absence of standardized protocols for the agencies that shall be responsible with all that will be done with this data.

NCRB as an agency oversees multiple other agencies that are used for forensic evidence in investigations. These agencies are AFIS (Automated Fingerprint Identification System), CCTNS (Crime and Criminal Tracking Network and System) etc. There is absolute ambiguity that the data this Act wishes to store shall not be shared with these agencies and third party databases. It makes sense that NCRB uses the help of these agencies to further the objective of conducting effective investigations but the lack of a privacy safeguard mechanism just makes it unsettling, because the mere assumption that the aims laid down in the preamble are insufficient to prove that these extensive databases shall actually aid investigations.[18]

This Act vests powers to extract, compel and retain certain identifiable personal information that infringes the informational privacy of persons it has targeted, and reiterating that the Act has to conform to the *Puttaswamy*[19] case's fourfold requirement to prevent said infringement. These requisites include the compelling purpose that serves public interest or "compelling state interest", the rationale and nexus between the law and such compelling purpose and that this information shall be extracted in the most dignified manner possible, meaning thereby that the infringement of privacy shall be outweighed by the compelling purpose of gaining and subsequent retaining of this information. This Act falls short on a lot of matters pertaining to privacy.

2. CONCLUSION

The DNA privacy law in India is at a very nascent stage and it is very acceptable too because we didn't even have the fundamental right to privacy until very recently. So naturally the DNA Bill 2019 is very immature and poorly drafted to list the least. It lacks majorly in addressing the issues of violations of privacy and offers no to minimum safeguards. The bill also lacks in definition clause and does not afford much attention to element of "consent".

As far as the present Act is concerned, this Act will be most fatal to the vulnerable marginalized groups of the society, as it will enable the state to brand the poorer sections and socially backward sections of the society, that are believed to have a criminal disposition. Our criminal justice system is largely in the hands and pockets of the powerful and rich of the society and is wired to discriminate against the poor, who cannot spend on their defenses and hence are at the mercy of the State machinery. This Act has also given wide discretionary powers in the hands of the police to impound any person they have reasonable suspicion against and these powers also stem from the Code of Criminal Procedure. This Act will make the marginalized poorer sections of the society succumb to more unlawful arrests, searches and criminal prosecution.

Therefore it is safe to derive conclusion that the present Act gives ample powers in the hands of the State and by extension is validating state surveillance. The DNA Bill needs to redrafted, there has to be more protection afforded to the people who are surrendering their DNA samples to the state and ultimately, it all boils down to, that every effort and every endeavor must be to ensure that we don't convert our country into a police state that is plagued with the constant threat of state surveillance.

As far as the Data Protection Bill is concerned, it is far better in its wording than the DNA bill. As per section 2 (19) which states that DNA being 'personal information' is "genetic data" under the Personal Data Protection Bill and should be protected by giving the appropriate rights to the individual who's DNA is being stored rather than the State. This bill will help supplement the DNA Bill and will provide for more rights in the hands of the data principals i.e., the people. We need to have a robust data protection regime to ensure that there is not one but two-tier safeguards to the right to privacy. The Data Protection Bill 2019 needs amendment too, to make it more efficient. Such as that there needs to be a limitation

[17] *Research Brief,* n 16

[18] *Ibid.*

[19] *Ibid.*

set for the powers afforded to the Central government, the powers of the Data protection authority (DPA) needs to be strengthened, the government should refrain from appropriating any "non-personal data" etc. There are many other rights that the Data protection bill seeks to protect and give which will truly supplement the DNA bill such as the right to have data destroyed, the right to be forgotten etc. So, for the DNA Bill to be enacted it must first incorporate transparent procedures of expulsion and destruction of data by the "data principal" i.e., the people and that can only happen if there's a complimentary data protection act already in place, so this question stands affirmatively answered that the data protection bill should and must precede the DNA Bill. So, the Personal Data Protection Bill should precede the DNA Technology (Use and Application) Technology Bill and then the Criminal Identification Act must be revisited to amend it so these three legislations can be in consonance with their primary objective that is protecting privacy at all costs.

After reading the texts of the DNA Bill and the present Act the inference drawn is that the objectives of the Criminal Procedure (Identification) Act are far-fetched to assume that having taken these 'measurements'will further the objective of crime prevention and effective investigations, and even though the first part of this paper vehemently criticizes the DNA Bill, in essence it is authored better than the present Act. The entire hullabaloo around retention of personal information and its misuse that disregards the right to privacy is still something that addressing in detail. The recommendations suggested by the B N Srikrishna committee on the personal data protection and the Malimath Committee must be adhered to and read with in consonance to the essence of the *Puttaswamy*[20] judgment to address the concerns that seem to be inevitable in dealing with sensitive personal information such as DNA profiles. Inspirations must be taken from other countries that successfully function with a DNA Data bank and the same to try and build one in our country that sits well with the intricately plagued criminal justice administration.

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