

I N D E X

<u>SL.NO.</u>	<u>PARTICULARS</u>	<u>PAGES</u>
1.	Affidavit on behalf of the department of Biotechnology, Ministry of Science & Technology, Government of India.	1-14
2.	<u>Annexure:I</u> The minutes of the first meeting	15-31
3.	<u>Annexure:II</u> The minutes of the second meeting	32-37
4.	<u>Annexure:III</u> The minutes of the Sub-Committee meeting.	38-52
5.	<u>Annexure:IV.</u> The minutes of the third meeting	53-57

IN THE SUPREME COURT OF INDIA
[CIVIL ORIGINAL JURISDICTION]
WRIT PETITION (CIVIL) NO. 491 OF 2012

IN THE MATTER OF:

LOKNITI FOUNDATION	VERSUS	...PETITIONER
UNION OF INDIA AND ORS.		..RESPONDENT(s)

**AFFIDAVIT ON BEHALF OF THE DEPARTMENT OF
BIOTECHNOLOGY, MINISTRY OF SCIENCE &
TECHNOLOGY, GOVERNMENT OF INDIA.**

I, Dr. Alka Sharma working as Scientist 'F', presently at Department of Biotechnology, Ministry of Science & Technology, Government of India, New Delhi, do state on solemn affirmation as under:

1. That I have gone through the copy of the Writ Petition and order of this Hon'ble Court dated 14-7-2014 and am conversant with the facts of the case and I am competent to swear this counter affidavit.

A. The Department of Biotechnology (DBT), Ministry of Science & Technology, Government of India is in the process of piloting Human DNA Profiling Bill. The objectives of the Bill, which consists of eleven chapters and one schedule, are to establish a

National DNA Data Bank, a DNA Profiling Board and the use of DNA profiles for specified purposes and for matters connected therewith or incidental thereto. The salient features of the Bill include:

- (1) The enablement for collection of DNA profiles of individuals for lawful purposes.
- (2) Creation of a DNA Profiling Board (DPB). The DPB will comprise of experts in molecular biology, human genetics, population biology, bioethics, social sciences, law and criminal justice, etc. The DPB would serve as an Authority to define and establish standards for DNA profiling, and to implement quality control measures, including the accreditation of DNA profiling laboratories.

The DPB is envisaged to have the following powers and functions *inter alia*: offer advice on the size, location, creation /upgradation of DNA laboratories; monitor, conduct, and audit training programmes and be responsible for quality control and assessment of DNA laboratories; supervise and inspect the equipment and material facilities;

authorize communication of DNA profiles to National law enforcement agencies and other agencies for civil proceedings and crime investigation; make recommendations for maximizing the use of DNA techniques and technologies; identify potential scientific advances that may assist law enforcement agencies in using DNA techniques; recommend privacy protection statutes relating to access to, or use of stored DNA samples or DNA analyses; recommend on the appropriate use and confidentiality of DNA information, and the timely removal of expunged or inaccurate DNA information; lay down standards and procedures for establishment and functioning of DNA Data Banks, manpower and infrastructure and other related issues; define, implement and arbitrate on all Ethical and Human Rights issues emanating out of DNA profiling in consonance with International guidelines laid by the United Nations Organization and its specialized agencies.

It is proposed that the DPB Secretariat be at the Centre for DNA Fingerprinting and Diagnostics (CDFD), Hyderabad, whose Director shall be the ex-officio Member-Secretary of the DPB. The DPB Secretariat would have a Chief Executive Officer who would be responsible for executive supervision of its day-to-day activities. The Bill also has provisions related to financing for functioning of the DPB.

(3) To establish and maintain a National DNA Data Bank, administered by a National DNA Data Bank Manager. The National DNA Data Bank is envisaged to maintain following indices for various categories of data, namely:

- I. a crime scene index;
- II. a suspects' index;
- III. an offenders' index;
- IV. a missing persons' index;
- V. unknown deceased persons' index;
- VI. a volunteers' index; and
- VII. such other DNA indices as may be specified by regulations made by the Board.

An index would need to be created of DNA profiles of individuals whose relatives have reportedly gone missing. This index would be created on a voluntary basis to help the relatives of missing persons help themselves, and it would be distinct from the index of volunteers whose DNA profiles are determined to further our knowledge of marker allele frequencies in different Indian sub-populations. The first index is of volunteers for the specific purpose of identifying missing individuals, and unidentified dead bodies. The second index is of volunteers for the research underlying the effective application of DNA profiling technology. The exercise of creating such an index will need legal sanction through legislation as envisaged under the draft DNA Profiling Bill.

- (4) The provision of penalties for abuse/misuse and unauthorized use of forensic samples for DNA profiling and the extracted DNA.

- (5) To provide opportunity for previously convicted individuals to seek DNA testing to establish their innocence.

B. Steps being taken on the issues currently involved in the Bill;

As part of the consultative process for enactment of the DNA Profiling Bill, the DBT has received comments from the Office of the Hon'ble Minister of State, Science & Technology and Earth Sciences wherein certain organizations (like Centre for Responsible Genetics) have expressed concerns on the privacy-related aspects in the draft DNA Profiling Bill, especially about certain privacy-related provisions connected with the establishment of National DNA Data Bank. The National DNA Data Bank is considered to be essential to fulfill the objectives as prayed by the Petitioner in the said Writ Petition.

DNA Profiling Bill is at present held up because of privacy concerns have been raised by certain Experts and NGOs. These concerns are

currently being addressed by an Expert Committee set up by DBT.

I. The DBT has constituted a Committee of Experts in January 2013 to discuss the privacy related issues on draft Human DNA Profiling Bill. The composition of the Expert Committee includes: Senior Adviser and Adviser from Planning Commission; Director General of Police (Retd.); Director, Centre for Internet & Society; Science Writer from Mint; Former Secretary, Legislative Department; Researcher & Advocate; Founder & Editor, Forum for Medical Ethics Society; nominee from National Commission for Child Rights; Director, and Scientist from CDFD; Adviser and Programme Officer dealing with the matter from DBT.

II. First meeting of this Expert Committee was held on 31st January, 2013 to discuss the privacy issues and concerns. The Director, CDFD, Hyderabad made a detailed presentation during this meeting covering all aspects of the Bill including creation of a National DNA Data Bank. It was discussed that

among the above mentioned indices, the volunteers' index (sub-clause f of point 3), is absolutely essential to calculate the statistical probability values that would be needed in judicial fora to establish that the match obtained between two DNA profiles is not by chance alone. To calculate these values, a one-time exercise is required to obtain (with informed consent) the DNA profiles of random individuals from each of the different communities in India to be stored in the National DNA Data Bank after anonymising the data and ensuring that they contain no personally identifiable information nor do they violate ethical norms. The minutes of the first meeting are at **Annexure-I (pages 15 to 30).**

Further, it was also discussed that all other indices mentioned in the section, are to be from individuals who would be interested parties with respect to the societal value of DNA profiling as envisaged in the Bill. For example, missing persons' index and unknown deceased persons' index would be essential for identification of the

unidentified bodies and of missing persons (including children) by comparing these profiles with the DNA profiles of their blood relatives, but the latter's participation in the exercise is completely voluntary and for their own benefit, without any element of enforcement or coercion. The crime scene index and suspects' index would help in linking the suspects to the scene of crime and therefore are essential for the criminal investigation purposes, but the DNA profiling of suspects would be undertaken only with judicial consent.

- III. The second meeting of the expert Committee was held on 13th May, 2013. After detailed discussion, it was decided that each member of the Committee will provide comments/inputs on the draft Bill before the end of July, 2013. The members of the Committee were requested to undertake the specific tasks in connection with the criminal law audit, ethical and social audit, child rights audit and also to obtain additional inputs from the Council for Responsible Genetics.

Further, a Sub-Committee was constituted by DBT to discuss the inputs received and modify the document for submission to the expert Committee for finalisation. The minutes of the second meeting are at **ANNEXURE-II (pages 31 to 37).**

- IV. The meeting of the Sub-Committee was held on 14th September 2013. The sub-Committee modified the draft Bill based on the inputs received. The minutes of the Sub-Committee meeting are at **ANNEXURE-III (pages 38 to 52).**

- V. Third meeting of the Expert Committee was held on 25th November, 2013. The Committee discussed point-wise recommendations of the Sub-Committee and accepted the recommendations for the composition of DNA Profiling Board and its functions. One of the members of the Expert Committee suggested consulting NGOs and lawyers on privacy related issues. The Committee is awaiting inputs from the member who has carried out extensive consultation with the lawyers and NGOs since November 2013 on privacy related issues on draft

'Human DNA Profiling Bill. The minutes of the third meeting are at ANNEXURE-IV (pages 53 to 57).

- C. Regarding paragraph 17 (iv), (v) & (vi) of the Record of Proceedings of Supreme Court of India. Does the proposed DNA Profiling Bill address these issues?

Yes, the issues are covered in the draft DNA Profiling Bill. In fact the DNA Profiling Advisory Committee has sourced some of the clauses based on the legislations from various countries, including USA, UK, etc.

- D. Specific instructions on how the Bill (or otherwise the Department) would cover the case of data bank as regard to DNA of unidentified dead bodies or missing persons who are found dead.

The Human DNA Profiling Bill has provision for establishment of DNA data bank. The framework for functioning of DNA data bank will be worked

out by the DNA Profiling Board once the Bill is enacted.

DNA profiling is a complex technology and also requires the creation of a DNA Data Bank to store and compare the DNA profiles of the deceased with those of their relatives. These activities need appropriate regulation to prevent the misuse of the samples and the DNA profiles, which can be achieved by the provisions enshrined in the draft Human DNA Profiling Bill.

As per the estimates provided by the CDFD, Hyderabad, the proposed framework requires a large number of trained personnel which the country does not have at the moment. By international standards, it is estimated that one DNA Examiner can undertake 100 cases per year; therefore for this activity alone (DNA profiling—40,000 samples per year), 400 DNA Examiners would be needed to do this job.

It is financially very resource intensive since on average at current costs it requires Rs.20,000/- per case. For every case, 1 or 2 skeletal remains

and 1 or 2 blood samples from the relatives or personal articles needs to be DNA profiled. Accordingly, the cost of identifying 40,000 unidentified deceased individuals would be Rs. 80 crores per year as per the estimates provide by CDFD, Hyderabad. In addition, salaries of the DNA Examiners and other support employees like Lab Technicians and Attenders also have to be provided for.

At present only a handful of forensic laboratories are involved in DNA profiling activities (for both civil and criminal cases) in India, which is a miniscule as compared to the requirements. Due to lack of sufficient number of the scientific laboratories dealing with the forensic DNA profiling aspects and the lack of sufficient number of DNA Examiners, at present it is difficult to provide DNA profiling services which can greatly impact the criminal justice delivery system. At the moment, India is estimated to have just 30- 40 DNA technical examiners in the forensic DNA laboratories for its 1200 million population,

against its estimated requirement of around 800-1000 DNA technical examiners.

Therefore, it is necessary to set-up large number of DNA testing units with skilled personnel who are capable of handling forensic DNA testing for identification of unidentified dead bodies.

Further, it is pertinent to mention that cross matching of DNA profiling data in the databank requires specialized software, and the CDFD, Hyderabad is in the process of acquiring the same from the Federal Bureau of Investigation (FBI), USA. This software is being supplied free of cost to CDFD and a training workshop for operationalisation of the software is to be held in CDFD from 4-11 October 2014.

VERIFICATION:

Verified that the contents of the above counter affidavit are true and correct to the, best of my knowledge and belief as also information derived from the records and that no contents thereof are false.

Verified at New Delhi on this the 12th day of September 2014.

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