

**Record Note of discussions of the Experts Sub-Committee Meeting on
Human DNA Profiling Bill held on 3rd September 2013 at CDFD, Hyderabad**

The Expert Committee to discuss the draft Human DNA Profiling Bill had constituted a Sub-Committee consisting of Dr. Raghbir Singh, Mr. Sunil Abraham, Shri Kamal Kumar, Dr. N. Madhusudan Reddy and Dr. Alka Sharma, to modify the draft Bill in the light of invited comments/inputs, in track change mode, from the members of the Committee.

The following Members attended the meeting:

1. Dr. Raghbir Singh, Former Secretary, Legislative Department, Ministry of Law, New Delhi
2. Shri Kamal Kumar, IPS (Retd.) Director General of Police, (Retd), Hyderabad
3. Mr. Sunil Abraham, Director, Centre for Internet and Society, Bengaluru
4. Dr. Alka Sharma, Director, DBT
5. Dr. N. Madhusudan Reddy, Staff Scientist and Group Leader, CDFD, Hyderabad

The Sub-Committee meeting was chaired by Dr. Raghbir Singh.

Dr. Durgadas P. Kasbekar, Haldane Chair, CDFD, also was invited to this meeting as a non-voting expert to advise and answer queries on matters pertaining to genetics and molecular biology.

Dr. J. Gowrishankar, Director, CDFD welcomed the Members and briefly attended the meeting and considered aloud as to whether advances in DNA Science, especially the next -generation sequencing technologies, are over-taking the Bill. Some privacy issues/ concerns raised are beyond the scope of this bill and these concerns can be taken care by the Privacy Bill proposed by Department of Personnel and Training, Government of India.

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He further mentioned that the present DNA profiling Bill piloted by DBT and CDFD has been finalized after a wide-ranging consultative process involving various Ministries and Departments of the Govt. of India and has been vetted by the Legal Department in Ministry of Law. Therefore he suggested that any changes/modifications can be carried out using the existing Bill (DBT version) as the template. Accordingly, a Draft Forensic DNA (Profiling) Bill submitted to the committee for consideration by the Centre for Internet and Society was not reviewed in this meeting as the Committee decided to work on the earlier draft (DBT version).

The Comments from Dr. Usha Ramanathan were received by most of the Members of the Sub-Committee in the morning of the meeting and efforts were made to address the issues raised by her in her note submitted to Dr. Alka Sharma.

The Sub-Committee went clause-by-clause through the draft Bill, and the Chapters and Sections of the draft Bill were re-worded, or otherwise modified, wherever necessary, with reference to the comments received. The following substantive changes were made:

1. In his introductory remarks, Dr. Raghbir Singh has mentioned that any Bill will be referred to Joint Parliamentary Committee/ Standing Committee/ Select Committee of Parliament and any outstanding issues can also be debated at this stage to address the concerns, if any, of the stake holders. He expressed his desire to complete the consultative process and submit the draft Bill to the Union Cabinet.
2. Dr. N. Madhusudan Reddy clarified the Bill will not regulate DNA research. The current draft will only regulate use of DNA for civil and criminal purposes.
3. On the query from Mr. Sunil Abraham regarding the absence of a Preamble in the draft Bill, Dr. Raghbir Singh mentioned that Preamble has not been included since long, it is the established norm that the long title serves the same purpose. Thus this bill does not have the preamble.

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4. DNA Profiling Board (Section 4) was composed of ¹⁶~~15~~ members in the draft Bill. The number was whittled down to 11, deemed a more manageable number. A method has to be worked out to bring in suitable Civil Society representation. The following modifications were suggested:
- To delete clause 4(d) i.e. Director, National Institute of Criminology and Forensic Sciences, New Delhi- *ex-officio Member*.
 - To include either clause 4(f) or (g) i.e. Chief Forensic Scientist, Directorate of Forensic Science, Ministry of Home Affairs, Government of India - *ex-officio Member* or Director of a Central Forensic Science Laboratory to be nominated by Ministry of Home Affairs, Government of India- *ex-officio Member*;
 - To change clause 4(i) i.e., to replace Chairman, National Bioethics Committee of Department of Biotechnology, Government of India- *ex-officio Member* **with** Chairman, National Human Rights Commissions or his nominee.
 - To delete Members mentioned in clause 4(l) i.e. Two molecular biologists to be nominated by the Secretary, Department of Biotechnology, Ministry of Science and Technology, Government of India- *Members*;
 - To delete clause 4(m) i.e. A population geneticist to be nominated by the President, Indian National Science Academy, New Delhi- *Member*.
 - Thus, now the total number of Members in the DPB would be decreased to 11 from the existing number of ¹⁶~~15~~.
5. Dr. Usha Ramanathan has suggested re-consideration of DNA Profiling Board (DPB). In response to her queries/ suggestions, it was felt that Director, CBI or his nominee should be a member since CBI has an important role to play (Clause 4(c). As regards the Vice-Chancellor of NLU (Clause 4(b)), it was felt that Vice-chancellor of any NLU or a **Professor** of any NLU with experience in criminal law should be a Member. It was felt that this clause should include the word, "Professor".
6. DPB Members with potential conflict of interest in matters under consideration to recuse themselves in deliberations in respect of such

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matters (Section 7), and they were liable to be removed from the Board in case they are found to have not disclosed the nature of such interest.

7. With regards to the term of office, conditions of service of Chairperson and other Members (clause 5) it was clarified by the Committee that there is a necessary distinction between ex-official and non ex-official officers in terms of duration of appointment. *Consequential amendment is section 5 consequent upon amendment to section 4 shall be carried out.*
8. With regards to the establishment of the DNA Profiling Board (clause 3) the committee clarified that the DNA Board needs to be a body corporate because:
 - a. There is precedent (TRAI, RBI, and SEBI)
 - b. There is a need to regulate the price of DNA technology and procedure.
9. Regarding functions of the Board (Section 12). The draft Bill lists 26 functions of the Board potentially blunting its focus. It should be redrafted with fewer functions, and these should be listed in descending order of priority to sharpen this function – namely regulate process, regulate the labs, regulates databanks. *Mr Sunil Abraham has agreed to the re-drafting and the same is appended herewith:-*

Powers and functions of the DNA Profiling Board. - (1) Subject to the provisions of this Act, the DNA Profiling Board shall have the power to regulate the manner in which DNA profiles are created and stored.

- ^c (2) Without prejudice to the generality of the provisions contained in subsection (1), the DNA Profiling Board may -
- a. prescribe procedures and regulate the manner by which DNA may be collected, sampled, processed, profiled, stored and destroyed;
 - b. prescribe procedures and regulate the manner by which DNA profiles may be created, stored, matched and destroyed;
 - c. lay down, from time to time, standards and procedures for the establishment of the National DNA Data Bank and the State DNA Data Banks;

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- d.** regulate the operations and functioning of the National DNA Data Bank and the State DNA Data Banks including, but not limited to, their human resources and infrastructure;
- e.** register and license DNA laboratories and regulate their operations and functioning including, but not limited to, their planning, organisation, management and supervision in respect of equipment, premises, material facilities, personnel, quality control, training programmes;
- f.** inspecting and auditing DNA laboratories to, *inter alia*, ensure accuracy, security, confidentiality and timely removal of DNA profiles and other information;
- g.** recommending measures for improvement of technologies and research related to DNA profiling and their use by law enforcement authorities;
- h.** develop and disseminate best practices concerning the collection and analyses of DNA;
- i.** deliberating and advising on all ethical and human rights issues emanating out of DNA profiling in consonance with international guidelines enumerated by the United Nations and its specialised agencies; and,
- j.** any other functions that the Central Government may, by notification, assign it. ' ' .

10. Section 16, regarding power of Board to withdraw approval granted to a DNA laboratory. In 16(d), the words "including audit reports" has been added, which now reads as, "---- to submit or offer for inspection relevant documents, including audit reports, when so demanded. It was agreed that if labs do not file their audit report (Clause 16 (1) (c)) on an annual basis, the lab will lose approval. If the lab loses its approval - all the materials will be shifted to another lab and the data subject will be informed.

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11. Section 16 to also stipulate that the data and samples held by a laboratory at the time of such withdrawal of approval to be transmitted to another repository as directed by the Board.
12. Section 19(2) DNA laboratory to be headed by person possessing a doctorate in a subject germane to molecular biology. Now the new Clause reads as “ Doctorate in a subject relevant to molecular biology from a ...”.
13. Clauses 20 and 30: It was felt that clause 20 and 30 can be merged into one clause by suitably modifying the Clause 20. Thus, the new Clause 20 reads as follows:
 - a. Clause 20. (1). The staff of every DNA laboratory shall possess such qualifications and experience commensurate with the job requirements as may be specified by the regulations.
 - b. (2). Every DNA laboratory shall employ such qualified technical personnel as may be specified by the regulations and technical personnel shall undergo regular training in DNA related subjects in such institutions and at such intervals as may be specified by the regulations.
 - c. (3). Head of every DNA laboratory shall ensure that laboratory personnel keep abreast of developments within the field of DNA and maintain such records on the relevant qualifications, training, skills and experience of the technical personnel employed in the laboratory as may be specified by the regulations.
 - d. Accordingly, change the Title: “Qualification, Recruitment and Training of DNA lab personnel.”
14. It was agreed that labs are required to have in place an evidence control system (Clause 22) because evidence should be treated as case property so courts should have the labs store the evidence and that the courts till date have always given DNA source material to labs to hold onto.

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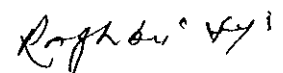
15. Clause 23(1).... add the words "shall follow" and the new Clause reads as "“Every DNA laboratory shall possess and shall follow a validation process as may be specified by the regulations.”"
16. Clause 27: paraphrase this clause, now the Clause reads as, "Every DNA laboratory shall have audits conducted annually in accordance with the standards as may be specified by the regulations." It was agreed that the audits of the DNA Laboratory (clause 27) do not need to be external.
17. Sections 28-31 on infrastructure and training brought into Chapter V and thus new title of the chapter reads as "Standards, Quality Control and Quality Assurance Obligations of DNA Laboratory and Infrastructure and Training".
18. Section 32 (1) establishment of DNA databank, limit to a National DNA Data Bank, established by the Central Government. The new Clause 32(1) reads as: "The Central Government shall, by notification, establish a National DNA Data Bank".
19. The argument that the type of indexes in the DNA databank should be limited and reduced was not accepted by the sub-committee and it was decided to keep all categories of indexes in the Bill.
20. It was agreed that the volunteer's database will be anonymized.
21. Concerns were raised over clause 35 (1) (a) and discussed.
22. Clause 40 (f): Add the phrase "with the concurrence of the court", thus the new clause reads as: "-----to the concerned parties to the said civil dispute or civil matter, with the concurrence of the court" and to the concerned judicial officer or authority".
23. Chapter VIII Confidentiality of access to DNA profiles, samples and records to include additional Sections to the effect that any person whose DNA profile is maintained in the DNA Data Bank will have the right to (a) access information pertaining to him and (b) to know to whom such

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information has been made available and particulars thereof. According to Clauses are inserted viz. Clause 42A and 42B, which read as follows:

- a. Clause 42A: "A person whose DNA profile has been created shall be given a copy of the DNA profile upon request".
 - b. Clause 42B: A person whose DNA profile has been created and stored shall be given information as to who has accessed his DNA profile or DNA information.
24. It was agreed that the minimal jail term for any offence under the Act from DNA Data Banks without authorization is a period of one month (Chapter X, section 53) because the Hon'ble Minister thought these were serious infringement on privacy.
- Section 56 Destruction, alteration, contamination, tampering with biological evidence to add phrase "... or otherwise willfully neglects any other duty cast upon him under the provisions of this Act, shall be punishable ...". This is to ensure any other action that can be seen as non compliance with privacy principles can be seen as an offence under clause 56 in the offences and penalties chapter.
25. It was agreed that the bill need not have all the required privacy safeguards - because when the Privacy Act comes into being - the privacy principles will have overriding effect.

Approved by



(Dr. Raghbir Singh)

Chairman

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