

HUMAN DNA PROFILING BILL 2012

(Working Draft version- 29th April 2012)

Contents

CHAPTER	TITLE	SECTIONS	PAGE
I	Preliminary	1	4
II	Definitions	2	5-11
III	DNA Profiling Board, its constitution, Powers and Functions	3-12	12-21
IV	Approval of DNA Laboratories	13-17	22-24
V	Standards, Quality Control, Quality Assurance Obligations of DNA Laboratory	18-27	25-27
VI	Infrastructure and Training for DNA Laboratory	28-31	28
VII	DNA Data Bank	32-37	29-33
VIII	Confidentiality of and Access to DNA Profiles, Samples and Records	38-45	34-38
IX	Finance, Accounts and Audit	46-51	39-41
X	Offences and Penalties	52-58	42-45
XI	Miscellaneous	59-71	46-55
	Schedules		56-58

HUMAN DNA PROFILING BILL, 2012

INTRODUCTION

The Deoxyribose Nucleic Acid (DNA) analysis of body substances is a powerful technology that makes it possible to determine whether the source of origin of one body substance is identical to that of another, and further to establish the biological relationship, if any, between two individuals, living or dead without any doubt. With the objective to enhance protection of people in the society and administration of justice, analysis of DNA found at the scene of crime, of the victim or offender has been used to establish identity. The DNA analysis offers sensitive information which, if, misused can cause harm to person or society. There is, thus, need to regulate the use of human DNA Profiles through an Act passed by the Parliament only for Lawful purposes of establishing identity in a criminal or civil proceeding and for other specified purposes.

In order to achieve this objective, it will be essential to establish standards for laboratories, staff qualifications, training, proficiency testing, collection of body substances, custody trail from collection to reporting and a National DNA Data Bank with policies of use and access to information therein, its retention and deletion. National DNA Data Bank Manager will supervise, execute and maintain this system and a DNA Profiling Board of eminent scientists, administrators and Law enforcement officers will administer and carry out other functions assigned to it under this Act. The proposed Legislation, therefore, be enacted keeping the above objectives in view.

THE HUMAN DNA PROFILING BILL, 2012

A BILL

to regulate the use of Deoxyribose Nucleic Acid analysis of human body substance profiles and for the establishment of DNA Profiling Board to lay down the standards for laboratories, collection of human body substances, custody trail from collection to reporting and also to establish a National DNA Data Bank and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows: -

	CHAPTER I PRELIMINARY	
Short title, extent and commencement.	<p>1. (1) This Act may be called the Human DNA Profiling Act, 2012.</p> <p>(2) It extends to the whole of India.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</p> <p>Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	

	CHAPTER II DEFINITIONS	
<p>Definitions</p>	<p>2. (1) In this Act, unless the context otherwise requires,-</p> <p>(a) “analytical procedure” means an orderly step by step procedure designed to ensure operational uniformity;</p> <p>(b) “audit” means an inspection used to evaluate, confirm or verify activity related to quality;</p> <p>(c) “Board” means the DNA Profiling Board constituted under sub-section (1) of section 3;</p> <p>(d) “calibration” means the set of operations which establish, under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement;</p> <p>(e) “Chairperson” means the Chairperson of the Board;</p> <p>(f) “crime scene index” means an index of DNA profiles derived from forensic material found-</p> <p>(i) at any place (whether within or outside India) where a specified offence was, or is reasonably suspected of having been, committed;</p> <p>(ii) on or within the body of the victim, or a person reasonably suspected of being a victim, of an offence,</p> <p>(iii) on anything worn or carried by the victim at the time when an offence was, or is reasonably suspected of having been, committed; or</p> <p>(iv) on or within the body of any person, on anything, or at any place, associated with the commission of a specified offence;</p> <p>(g) “DNA” means Deoxyribose Nucleic Acid;</p>	<p>Sec. 2 of DNA Advisory Board, USA, 1998 [DAB]</p> <p>DAB</p> <p>DNA Identificatio n Act: Revised Statutes of Canada</p> <p>DNA</p>

	<p>(h) “DNA Data Bank” means a consolidated DNA profile storage and maintenance facility, whether in computerised or other form, containing the indices mentioned under sub-section (4) of section 32;</p> <p>(i) “DNA Data Bank Manager” means the person responsible for supervision, execution and maintenance of the DNA Data Bank;</p> <p>(j) “DNA laboratory” means any laboratory or facility established by the Central Government or a State Government or any other individual or Organization to perform DNA procedures;</p> <p>(k) “DNA procedure” means a procedure to develop DNA profile for use in the applicable instances as specified in Part I of the Schedule;</p> <p>(l) “DNA profile” means results of analysis of a DNA sample with respect to human identification;</p> <p>(m) “DNA sample” means biological specimen of any nature that is utilised to conduct DNA analysis, as specified in Part II of the Schedule;</p> <p>(n) “DNA testing” means the identification and evaluation of biological evidence using DNA technologies for use in the applicable instances as specified in Part I of the Schedule;</p> <p>(o) “forensic material” means biological material of or from the body of a person living or dead, and representing an intimate body sample or non-intimate body sample;</p> <p>(p) “Fund” means the Human DNA Profiling Board Fund constituted under sub-section (1) of section 47;</p> <p>(q) “intimate body sample” means a sample, taken from or of a person living or dead, of blood, semen or any other tissue fluid, urine, or pubic hair; or a swab taken from a person’s body</p>	<p>Identification Act: USA and DNA Identification Act: Revised Statutes of Canada New</p> <p>New</p> <p>New</p> <p>New</p> <p>New</p> <p>New</p> <p>DNA Identification Act: Revised Statutes of Canada</p> <p>New Part ID – Forensic procedures of the Crimes Act, 1914, Australia [CAA]</p>
--	---	--

	<p>orifice other than mouth; or skin or tissue from an internal organ or body part;</p> <p>(r) “intimate forensic procedure” means any of the following forensic procedures on a living individual, namely:-</p> <p>(i) external examination of the genital or anal area, the buttocks and also breasts in the case of a female;</p> <p>(ii) taking of a sample of blood;</p> <p>(iii) taking of a sample of pubic hair;</p> <p>(iv) taking of a sample by swab or washing from the external genital or anal area, the buttocks and also breasts in the case of a female;</p> <p>(v) taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks and also breasts in the case of a female;</p> <p>(vi) taking of a photograph or video recording of, or an impression or cast of a wound from, the genital or anal area, the buttocks and also breasts in the case of a female;</p> <p>(s) “known samples” means the samples which are biological materials whose identity or type is established;</p> <p>(t) “Member” means a member of the Board and includes Chairperson;</p> <p>(u) “missing persons’ index” means an index of DNA profiles derived from forensic material taken from-</p> <p>(i) the persons who are missing; and</p> <p>(ii) the volunteers who are relatives of missing persons;</p> <p>(v) “non-intimate body sample” means any of the following taken from or of a person living or dead:</p>	<p>[CAA]</p> <p>[DAB]</p> <p>New</p> <p>[CAA]</p>
--	---	---

	<ul style="list-style-type: none"> (i) a sample of hair other than pubic hair; (ii) a sample taken from a nail or under a nail; (iii) swab taken from any part of a person's body including mouth, but not any other body orifice; (iv) saliva; or (v) a skin impression; (w) "non-intimate forensic procedure" means any of the following forensic procedures on a living individual, namely:- <ul style="list-style-type: none"> (i) examination of a part of the body other than the genital or anal area, the buttocks and also breasts in the case of a female, that requires touching of the body or removal of clothing; (ii) taking of a sample of hair other than pubic hair; (iii) taking of a sample from a nail or under a nail; (iv) taking of buccal swab with consent; (v) taking of a sample by swab or washing from any external part of the body other than the genital or anal area, the buttocks and also breasts in the case of a female; (vi) scraping or lifting by tape from any external part of the body other than the genital or anal area, the buttocks and also breasts in the case of a female; (vii) taking of a handprint, fingerprint, footprint or toe print; or (viii) taking of a photograph or video recording of, or an impression or cast of a wound from, a part of the body other than the genital or anal area, the buttocks and also breasts in the case of a female; (x) "notification" means a notification published in 	<p>[CAA}</p> <p>DNA</p>
--	--	-------------------------

	<p>the Official Gazette;</p> <p>(y) “offender” means a person who has been convicted of or an undertrial charged with a specified offence;</p> <p>(z) “offenders’ index” means an index of DNA profiles from known samples of body substances taken from offenders;</p> <p>(za) “prescribed” means prescribed by rules made by the Central Government under this Act;</p> <p>(zb) “proficiency testing” means a quality assurance measure used to monitor performance and identify areas in which improvement may be needed and includes-</p> <p>(i) internal proficiency test which is devised and administered by the laboratory; and</p> <p>(ii) external proficiency test, which may be open or blind, and which is obtained from an external agency;</p> <p>(zc) “quality assurance” means and includes the systematic actions necessary to demonstrate that a product or service meets specified requirements for quality;</p> <p>(zd) “quality manual” is a document to specify the quality procedures, quality systems and practices of an organization relating to standards, quality control and quality assurance;</p> <p>(ze) “quality system” is the organizational structure, responsibilities, procedure, process and resources for implementing quality management;</p> <p>(zf) “regulations” means the regulations made by the DNA Profiling Board under this Act;</p> <p>(zg) “Schedule” means the Schedule to this Act;</p> <p>(zh) “specified offence” means any offence listed in Part I of the Schedule;</p>	<p>Identification Act: Revised Statutes of Canada</p> <p>[DAB]</p> <p>[DAB]</p> <p>[DAB]</p> <p>[DAB]</p> <p>[DAB]</p> <p>New</p>
--	--	---

	<p>(zi) “suspect” means a person suspected of having committed an offence;</p> <p>(zj) “suspects’ index” means an index of DNA profiles derived from forensic material lawfully taken from suspects;</p> <p>(zk) “undertrial” means a person against whom a criminal proceeding is pending in a court of law;</p> <p>(zl) “unknown deceased persons’ index” means an index of DNA profiles derived from forensic material of deceased persons whose identities are not known;</p> <p>(zm) “validation” means process by which a procedure is evaluated to determine its efficacy and reliability for casework analysis and includes-</p> <p style="padding-left: 40px;">(i) developmental validation, being the acquisition of test data and determination of conditions and limitations, of a new or novel DNA methodology for use on case samples; and</p> <p style="padding-left: 40px;">(ii) internal validation, being an accumulation of test data within the laboratory, to demonstrate that the established methods and procedures performed as expected in the laboratory;</p> <p>(zn) “volunteers’ index” means an index of DNA profile derived from body samples taken from volunteers;</p> <p>(zo) “volunteer” means a person who volunteers to undergo a DNA procedure and, in case of a child or incapable person, his parent or guardian having agreed to submit the child or the incapable person to undergo a DNA procedure;</p> <p>(2) All words and expressions used and not defined in this Act but defined in the Indian Penal Code, the</p>	<p>New</p> <p>[DAB]</p> <p>45 of 1860 1 of 1872</p>
--	---	---

	Indian Evidence Act, 1872, the General Clauses Act, 1897, the Code of Criminal Procedure, 1973, shall have the same meanings respectively assigned to them in that Code or those Acts.	10 of 1897 2 of 1974
--	--	-------------------------

CHAPTER III		
DNA PROFILING BOARD		
Establishment of DNA Profiling Board.	<p>3. (1) With effect from such date as the Central Government may, by notification appoint, there shall be established, for the purposes of this Act, a Board to be called the DNA Profiling Board.</p> <p>(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.</p> <p>(3) The head office of the Board shall be at Hyderabad.</p> <p>(4) The Board may establish regional offices at other places in India.</p>	<p>Sec. 3 of TRAI Act 1997 (24 of 1997)</p> <p>Sec. 3 of SERB Act 2008 (9 of 2009)</p> <p>PNGRB Act, 2006 (19 of 2006)</p>
Composition of Board	<p>4. The Board shall consist of the following Members appointed from amongst persons of ability, integrity and standing who have knowledge or experience in DNA profiling including molecular biology, human genetics, population biology, bioethics, social sciences, law and criminal justice or any other discipline which would be useful to DNA profiling, namely:-</p> <p>(a) A renowned molecular biologist to be appointed by the Central Government- <i>Chairperson</i>;</p> <p>(b) Vice Chancellor of a National Law University established under an Act of Legislature to be nominated by the Chairperson- <i>ex-officio Member</i>;</p> <p>(c) Director, Central Bureau of Investigation or his nominee (not below the rank of Joint Director)- <i>ex-officio Member</i>;</p> <p>(d) Director, National Institute of Criminology and Forensic Sciences, New Delhi- <i>ex-officio Member</i>;</p>	<p>Clause 4 of PFRDA Bill, 2005 (36 of 2005)</p> <p>Similar to non- ex-officio expert members of SERB Act. Sec. 3 (3).</p>

	<p>(e) Director General of Police of a State to be nominated by Ministry of Home Affairs, Government of India- <i>ex-officio Member</i>;</p> <p>(f) Chief Forensic Scientist, Directorate of Forensic Science, Ministry of Home Affairs, Government of India - <i>ex-officio Member</i></p> <p>(g) Director of a Central Forensic Science Laboratory to be nominated by Ministry of Home Affairs, Government of India- <i>ex-officio Member</i>;</p> <p>(h) Director of a State Forensic Science Laboratory to be nominated by Ministry of Home Affairs, Government of India- <i>ex-officio Member</i>;</p> <p>(i) Chairman, National Bioethics Committee of Department of Biotechnology, Government of India- <i>ex-officio Member</i>;</p> <p>(j) Director, National Accreditation Board for Testing and Calibration of Laboratories, New Delhi- <i>ex-officio Member</i>;</p> <p>(k) Financial Adviser, Department of Biotechnology, Government of India or his nominee- <i>ex-officio Member</i>;</p> <p>(l) Two molecular biologists to be nominated by the Secretary, Department of Biotechnology, Ministry of Science and Technology, Government of India- <i>Members</i>;</p> <p>(m) A population geneticist to be nominated by the President, Indian National Science Academy, New Delhi- <i>Member</i>;</p> <p>(n) A representative of the Department of Biotechnology, Government of India to be nominated by the Secretary, Department of Biotechnology, Ministry of Science and Technology, Government of India- <i>Member</i>;</p> <p>(o) Director, Centre for DNA and Fingerprinting and Diagnostics (CDFD), Hyderabad- <i>ex-officio Member- Secretary</i>.</p>	
--	---	--

<p>Term of office, conditions of service of Chairperson and other Members.</p>	<p>5. (1) The Chairperson appointed under this Act shall hold office for a term of five years from the date on which he assumes office and shall not be eligible for re-appointment or extension.</p> <p>(2) The term of a Member under clause (b), (e), (g), or (h) of section (4) shall be for four years from the date on which he assumes office or until the completion of the tenure in his post, whichever is earlier.</p> <p>(3) The term of a Member under clause (l), (m) or (n) of section 4 shall be for five years from the date on which he assumes office.</p> <p>(4) A person appointed under sub-sections (l), (m) or (n) of section 4 shall not be appointed for more than two consecutive terms.</p> <p>(5) The term of an ex-officio Member appointed under clause (c), (d), (f), (i), (j), (k) or (o) shall continue as long as he holds the office by virtue of which he is a Member.</p> <p>(6) The Members of the Board shall be entitled to such allowances, if any, as may be prescribed but no Member referred in section 4, shall be entitled to any salary by reason of their appointment on the Board.</p>	<p>Sec. 6 of Food Safety and Standards Authority of India Act, 2006</p> <p>Sec. 5 of PNGRB Act, 2006 (19 of 2006)</p> <p>Sec. 16 of ASIR Act 2010 (73 of 2010)</p> <p>Sec. 15 of ASIR Act, 2010 (73 of 2010)</p>
<p>Meetings of Board</p>	<p>6. (1) The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.</p> <p>(2) The Chairperson or, if for any reason, he is unable</p>	<p>Sec. 8 of TRAI Act 1997 (24 of 1997)</p> <p>Sec. 8 of PNGRB Act, 2006 (19 of</p>

	<p>to attend a meeting of the Board, the senior-most Member present, reckoned from the date of appointment to the Board, shall preside at the meeting:</p> <p>Provided that in case of common date of appointment of Members, the Member senior in age shall be considered as senior to the other Members.</p> <p>(3) All questions which come up before any meeting of the Board shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or, in his absence, the person presiding shall have a second or casting vote.</p> <p>(4) All orders and decisions of the Board shall be authenticated by the Member-Secretary or any other officer of the Board duly authorized by the Chairperson in this behalf.</p>	2006)
<p>Member not to participate in meetings in certain cases.</p>	<p>7. Any Member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Board shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and such Member shall not take any part in any deliberation or decision of the Board with respect to that matter.</p>	<p>Clause 12 of the National Accreditation Regulatory Authority Bill, 2010. (54 of 2010)</p>
<p>Removal,</p>	<p>8. (1). The Central Government may remove from office the Chairperson or any other Member, who-</p>	<p>Sec. 7 of the PNGRB Act,</p>

<p>resignation and filling of vacancy of Chairperson or any other Member of the Board</p>	<p>(a) has been adjudged as insolvent;</p> <p>(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;</p> <p>(c) has become physically or mentally incapable of acting as a Member;</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest:</p> <p>Provided that no Chairperson or other Member shall be removed from office under clause (d) or clause (e) except by an order made by the Central Government after an inquiry made in this behalf in which such Chairperson or other Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.</p> <p>(2) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member of the Board, the Central Government shall appoint another person to fill such vacancy in accordance with the provisions of this Act.</p> <p>(3) The Chairperson or any other Member of the Board may by a notice of not less than thirty days in writing under his hand, addressed to the Central Government, resign his office from the Board and the vacancy so caused or otherwise caused shall be filled from the same category of persons by the Central Government:</p> <p>Provided that the Chairperson or any other Member of</p>	<p>2006 (19 of 2006)</p> <p>Sec. 7 of TRAI Act 1997 (24 of 1997)</p> <p>Sec. 35 of ASIR Act- (73 of 2010)</p>
---	--	---

	<p>the Board shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earlier.</p>	
<p>Vacancies not to invalidate proceedings of Board.</p>	<p>9. No act or proceeding of the Board shall be invalid merely by reason of-</p> <p>(a) any vacancy in, or any defect in the constitution of, the Board; or</p> <p>(b) any defect in the appointment of a person acting as a Member of the Board; or</p> <p>(c) any irregularity in the procedure of the Board not affecting the merits of the case.</p>	<p>Sec. 9 of TRAI Act 1997 (24 of 1997)</p> <p>Sec. 37 of ASIR Act, 2010 (73 of 2010)</p> <p>Sec. 9 of the PNGRB Act, 2005</p>
<p>Powers and functions of the Chief Executive Officer</p>	<p>10. (1) There shall be a Chief Executive Officer of the Board who shall be appointed by a selection committee consisting of the Chairperson and four other Members nominated by the Board.</p> <p>(2) The Chief Executive Officer shall be a person not below the rank of Joint Secretary to the Government of India or equivalent and he shall report to the Member-Secretary of the Board.</p> <p>(3) The Chief Executive Officer shall be a scientist with understanding of genetics and molecular biology.</p> <p>(4) The Chief Executive Officer appointed under subsection (1) shall exercise such powers and perform such duties, as may be specified by the regulations made by the Board, under the direction and control of the Member-Secretary.</p>	

<p>Officers and other employees of the Secretariat of the Board.</p>	<p>11. (1) The Board may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees to be appointed that are required to assist the Board in the efficient discharge of its functions.</p> <p>(2) The salaries and allowances payable to and the other terms and conditions of service of the Chief Executive Officer and other officers and employees appointed under sub-section (1) shall be such as may be decided by the Board with the approval of the Central Government.</p> <p>(3) The Board may appoint consultants required to assist in the discharge of its functions on such terms and conditions as may be specified by the regulations made by the Board.</p>	<p>Sec. 10 of the PNGRB Act, 2005</p> <p>Sec. 5 TRAI Act 1997 (24 of 1997)</p>
<p>Functions of the Board.</p>	<p>12. The Board shall exercise and discharge the following functions for the purposes of this Act, namely:-</p> <p>(a) advising concerned Ministries and Departments of the Central Government and the State Governments on the size of DNA laboratories, their strategic location, creation of new DNA laboratories and upgradation of existing DNA laboratories;</p> <p>(b) facilitating and assisting the State Governments in creation of DNA laboratories and DNA Data Banks;</p> <p>(c) making recommendations on quantum of central funds required for creation or upgradation of DNA laboratories and DNA Data Banks;</p> <p>(d) recommending mechanism of providing funds for functioning of DNA laboratories for a specified</p>	<p>US Code collection: Title 42, Chapter 136, Subchapter IX, Part A (DNA Identification), Sec. 14136c</p>

	<p>period;</p> <ul style="list-style-type: none">(e) advising on planning, organization and management of DNA laboratories and monitoring, registering and certifying all DNA training programmes and recommending programmes that would increase the number of qualified DNA examiners;(f) monitoring, regulating, conducting, certifying and auditing training programmes and be responsible for quality control and assessment of DNA laboratories;(g) framing guidelines for training of manpower and development of training modules;(h) supervising and inspecting the equipment and material facilities;(i) making suggestions regarding new research and development activities in DNA profiling and related issues including intellectual property issues;(j) authorizing procedures for communication of DNA profile for civil proceedings and for crime investigation by law enforcement and other agencies;(k) making recommendations for maximising the use of DNA techniques and technologies in administration of justice;(l) identifying scientific advances that may assist law enforcement agencies in using DNA techniques to protect the public;(m) disseminating best practices concerning the collection and analyses of DNA evidence so as to ensure quality and consistency in the use of DNA techniques in administration of justice;(n) giving its recommendations in respect of issues relating to DNA science as may be referred to it by the Central Government and act as referral	
--	---	--

	<p>body to resolve such issues;</p> <p>(o) making recommendations for provision of privacy protection laws, regulations and practices relating to access to, or use of, stored DNA samples or DNA analyses with a view to ensure that such protections are sufficient;</p> <p>(p) making specific recommendations to-</p> <ul style="list-style-type: none">(i). ensure the appropriate use and dissemination of DNA information;(ii). ensure the accuracy, security and confidentiality of DNA information;(iii). ensure the timely removal and destruction of obsolete, expunged or inaccurate DNA information; and(iv). take any other necessary steps required to be taken to protect privacy; <p>(q) providing a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described above;</p> <p>(r) laying down standards and procedures for establishment and functioning of DNA laboratories and DNA Data Banks including manpower, infrastructure and other related issues concerning monitoring of their performance and activities;</p> <p>(s) sensitizing and creating awareness among public and other stakeholders including police officers, prosecutors and judicial officers;</p> <p>(t) 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 Organization and its specialized agencies, <i>inter alia</i>, relating to-</p> <ul style="list-style-type: none">(i) the rights and privacy of citizens;(ii) the issues concerning civil liberties;	
--	---	--

	<p>(iii) issues having ethical and other social implications in adoption of DNA profiling technology; and</p> <p>(iv) professional ethics in DNA profiling.</p> <p>(u) establishing procedure for cooperation in criminal investigation between various investigation agencies within the country and with international agencies;</p> <p>(v) identifying and elaborating the procedure for inter-state cooperation in dealing with DNA profiling;</p> <p>(w) specifying, by regulations, the list of applicable instances of human DNA profiling and the sources and manner of collection of samples in addition to the lists contained in the Schedule;</p> <p>(x) enumerating the guidelines for storage of biological substances and their destruction;</p> <p>(y) undertaking any other activity which in the opinion of the Board advances the purposes of this Act; and</p> <p>(z) performing such other functions as may be assigned to it by the Central Government from time to time.</p>	
--	---	--

CHAPTER IV		
APPROVAL OF DNA LABORATORIES		
Prohibition for undertaking DNA procedures.	13. No DNA laboratory shall undertake any human DNA procedures or any other procedure related to it for the purposes of this Act without obtaining the approval in writing from the Board.	Sec. 3 of Credit Information Companies (Regulations) Act, 2006
Application for obtaining approval and subsequent renewals thereof for undertaking DNA procedures.	<p>14. (1) Every DNA laboratory shall, for undertaking DNA procedures for the purposes of this Act, make an application for approval and subsequent periodical renewals thereof, in such form and manner and along with such fee, as may be specified by regulations made by the Board.</p> <p>(2) Every DNA laboratory in existence on the date of commencement of this Act, before the expiry of six months from such commencement, shall apply in writing to the Board for obtaining approval under this Act:</p> <p>Provided that in the case of a DNA laboratory that has been in existence on the date of commencement of this Act and that has complied with the provisions under this sub-section, nothing in section 13 shall be deemed to prohibit such DNA laboratory from undertaking any DNA procedure or any other procedure related to it until it is by notice in writing informed by the Board that the application submitted by the said DNA laboratory for approval has been rejected under section 15.</p>	Sec. 4 of Credit Information Companies (Regulations) Act, 2006
Grant of approval	15. Upon the receipt of the application for approval of a DNA laboratory or renewal thereof, the Board may either accord such approval or renewal thereof or	Sec. 5 of Credit

<p>and subsequent renewals thereof.</p>	<p>reject the same on being satisfied by an inspection of DNA laboratory, records and books of such DNA laboratory that the conditions as prescribed had been fulfilled or otherwise:</p> <p>Provided that no application for approval or periodical renewals thereof under this section shall be rejected unless the applicant has been given an opportunity of being heard.</p>	<p>Information Companies (Regulations) Act, 2006</p>
<p>Power of Board to withdraw approval.</p>	<p>16. (1) The Board may withdraw approval granted to a DNA laboratory, if such DNA laboratory-</p> <ul style="list-style-type: none"> (a) ceases to undertake DNA procedure or any other procedure related to it; (b) has failed to comply with any of the conditions subject to which the approval has been granted to it; (c) has failed to comply with provisions of any law for the time being in force or any direction issued by the Board under the provisions of this Act or direction issued by any other regulatory Authority to it; or (d) has failed to submit or offer for inspection its laboratory or books of account and other relevant documents when so demanded by the officers, persons or agency authorized by the Board. <p>(2) Before withdrawing approval granted to a DNA laboratory under this section, the Board shall grant time to such laboratory on such terms and conditions as the Board may deem appropriate for taking necessary steps to comply with such directions or provisions or for fulfillment of such conditions within such time:</p> <p>Provided that if the Board is of the opinion that the</p>	<p>Sec. 6 of Credit Information Companies (Regulations) Act, 2006</p>

	<p>delay in withdrawing approval of such laboratory shall be prejudicial or detrimental to the public interest, the Board may suspend the approval forthwith pending final decision on such withdrawal.</p> <p>(3) No order of withdrawal of approval granted to a DNA laboratory shall be made by the Board unless such laboratory has been given an opportunity of being heard:</p> <p>Provided that this sub-section shall not apply where the Board is satisfied that in public interest, for the reasons to be recorded in writing, it is neither desirable nor necessary to issue any such notice.</p>	
<p>Appeal against non-approval or withdrawal of approval.</p>	<p>17. (1) Any DNA laboratory aggrieved by an order of rejection of its application for approval or renewal thereof under section 15 or order of withdrawal of approval under section 16 may prefer an appeal to the Central Government or such other authority as the Central Government may by notification specify within a period of thirty days from the date of communication of the said order.</p> <p>(2) The decision of the Central Government or the authority referred to in sub-section (1) shall be final:</p> <p>Provided that, before making any order on such appeal, the applicant DNA laboratory shall be given an opportunity of being heard.</p>	<p>Sec. 7 of Credit Information Companies (Regulations) Act, 2006</p>

CHAPTER V		
STANDARDS , QUALITY CONTROL AND QUALITY ASSURANCE OBLIGATIONS OF DNA LABORATORY		
Obligations of DNA laboratory.	<p>18. Every DNA laboratory which has been granted approval for performing DNA analysis for the purpose of this Act shall-</p> <p style="padding-left: 40px;">(a) follow such standards for quality assurance for DNA testing as may be specified by regulations made by the Board;</p> <p style="padding-left: 40px;">(b) establish and maintain a documented quality system as may be specified by regulations made by the Board; and</p> <p style="padding-left: 40px;">(c) establish and maintain quality manual with details as may be specified by regulations made by the Board.</p>	Sec. 3 of DNA Advisory Board (DAB), USA, 1998
Organisation and management of DNA laboratory.	<p>19. (1) Every DNA laboratory shall employ such technical and managerial staff and resources required to discharge duties and functions by such technical and managerial staff as may be specified by regulations made by the Board.</p> <p>(2) Head of every DNA laboratory shall be a person possessing educational qualifications of Doctorate in Life Sciences from a recognised University with knowledge and understanding of the foundation of molecular genetics as applied to DNA work and such other qualifications as may be specified by regulations made by the Board.</p>	Sec. 4 of DNA Advisory Board, USA, 1998
Qualifications of staff for DNA	<p>20. (1) The staff of every DNA laboratory shall possess such qualifications, training and experience commensurate with the job requirements as may be specified by the regulations made by the Board.</p>	Sec. 5 of DNA Advisory Board, USA,

laboratory.	(2) 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 made by the Board.	1998
Adequate security and minimise contamination.	21. Every DNA laboratory shall have such facility providing adequate security and minimising contamination of DNA samples as may be specified by the regulations made by the Board.	Sec. 6 of DNA Advisory Board, USA, 1998
Evidence control system.	22. Every DNA laboratory shall have and shall follow a documented evidence control system so as to ensure the integrity of physical evidence as may be specified by the regulations made by the Board.	Sec. 7 of DNA Advisory Board, USA, 1998
Validation process.	23. (1) Every DNA laboratory shall possess a validation process as may be specified by the regulations made by the Board. (2) Such validation process shall be carefully controlled and monitored in such manner as may be specified by the regulations made by the Board.	Sec. 8 of DNA Advisory Board, USA, 1998
Analytical procedures.	24. Every DNA laboratory shall possess and shall follow such written analytical procedures as may be specified by the regulations made by the Board.	Sec. 9 of DNA Advisory Board, USA, 1998
Preparation of indices.	25. Every DNA laboratory shall prepare such indices as may be specified by the regulations made by the Board.	
	26. Every DNA laboratory shall use such equipment	Sec. 10 of

Equipment calibration and maintenance.	suitable for the methods employed as may be specified by the regulations made by the Board.	DNA Advisory Board, USA, 1998
Audits of the DNA laboratory.	27. Every DNA laboratory shall conduct audits annually in accordance with the standards as may be specified by the regulations made by the Board.	Sec. 6 of DNA Advisory Board, USA, 1998

CHAPTER VI		
INFRASTRUCTURE AND TRAINING		
Infrastructure for DNA laboratory.	28. Every DNA laboratory shall possess such infrastructure as may be specified by the regulations made by the Board.	
Fee for DNA procedure.	29. Every DNA laboratory shall charge fee for conducting DNA procedure not exceeding that as may be specified by regulations made by the Board.	
Recruitment and Training of DNA laboratory personnel.	30. Every DNA laboratory shall employ such qualified technical personnel as may be specified by the regulations made by the Board 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 made by the Board.	
Security and safety of personnel.	31. Every DNA laboratory shall have installed appropriate security system and system for safety of personnel as may be specified by the regulations made by the Board.	

	CHAPTER VII DNA DATA BANK	
<p>Establishment of DNA Data Bank.</p>	<p>32. (1) The Central Government shall, by notification, establish a National DNA Data Bank and as many Regional DNA Data Banks thereunder for every State or a group of States, as necessary.</p> <p>(2) Every State Government may, by notification, establish a State DNA Data Bank which shall share the information with the National DNA Data Bank.</p> <p>(3) The National DNA Data Bank shall receive DNA data from State DNA Data Banks and shall store the DNA profiles received from different laboratories in the format as may be specified by the regulations made by the Board.</p> <p>(4) Every DNA Data Bank shall maintain following indices for various categories of data, namely:-</p> <ul style="list-style-type: none"> (a) a crime scene index; (b) a suspects' index; (c) an offenders' index; (d) a missing persons' index; (e) unknown deceased persons' index; (f) a volunteers' index; and (g) such other DNA indices as may be specified by regulations made by the Board. <p>(5) The indices maintained under sub-section (4) shall include information of data based on DNA analysis prepared by a DNA laboratory duly approved by the Board under section 15 of the Act, and of records relating thereto, in accordance with the standards as may be specified by the regulations made by the Board.</p>	<p>US Code collection: Title 42, Chapter 136, Subchapter IX, Part A (DNA Identification), Sec. 14132</p>

	<p>(6) Every DNA Data Bank shall contain, in relation to each of the DNA profiles, the following information, namely:-</p> <p>(a) in case of a profile in the offenders' index, the identity of the person from whose body substance or body substances from which the profile was derived, and</p> <p>(b) in case of all other profiles, the case reference number of the investigation associated with the body substance or body substances from which the profile was derived.</p>	<p>Sec. 5 DNA Identification Act: Revised Statutes of Canada</p>
<p>DNA Data Bank Manager.</p>	<p>33. (1) All operations of and concerning the National DNA Data Bank shall be carried out under the supervision of a DNA Data Bank Manager who shall be appointed by a selection committee consisting of Chairperson and four other Members nominated by the Board.</p> <p>(2) The DNA Data Bank Manager shall be a person not below the rank of Joint Secretary to the Government of India or equivalent and he shall report to the Member-Secretary of the Board.</p> <p>(3) The DNA Data Bank Manager shall be a scientist with understanding of computer applications and statistics.</p> <p>(4) The DNA Data Bank Manager appointed under sub-section (1) shall exercise such powers and perform such duties, as may be specified by the regulations made by the Board, under the direction and control of the Member-Secretary.</p>	
	<p>34. (1) The Board may, with the approval of the</p>	

<p>Officers and other employees of the National DNA Data Bank.</p>	<p>Central Government, determine the number, nature and categories of other officers and employees to be appointed for the National DNA Data Bank and Regional DNA Data Bank or Banks thereunder.</p> <p>(2) The salaries and allowances payable to and the other terms and conditions of service of the National DNA Data Bank Manager and other officers and employees appointed under sub-section (1) shall be such as may be decided by the Board with the approval of the Central Government.</p> <p>(3) The Board may appoint consultants required to assist in the discharge of the functions of the DNA Data Banks on such terms and conditions as may be specified by the regulations made by the Board.</p>	<p>Sec. 10 of the PNGRB Act, 2005</p> <p>Sec. 5 TRAI Act 1997 (24 of 1997)</p>
<p>Matching of profiles.</p>	<p>35. (1) On receipt of a DNA profile for entry in the DNA Data Bank, the DNA Data Bank Manager shall cause it to be compared with the DNA profiles in the DNA Data Bank in order to determine whether it is already contained in the DNA Data Bank and shall communicate, for the purposes of the investigation or prosecution in a criminal offence, the following information to a court, tribunal, law enforcement agency or DNA laboratory in India which the DNA Data Bank Manager considers is concerned with it, appropriate, namely:-</p> <p>(a) as to whether the DNA profile received is already contained in the Data Bank; and</p> <p>(b) any information, other than the DNA profile received, is contained in the Data Bank in relation to the DNA profile received.</p> <p>(2) The information as to whether a person’s DNA</p>	<p>Sec.6 of the DNA Identification Act: Revised Statutes of Canada</p>

	<p>profile is contained in the offenders' index may be communicated to an official who is authorized to receive the same as prescribed.</p>	
<p>Communication of DNA profiles to foreign agencies.</p>	<p>36. (1) On receipt of a DNA profile from the government of a foreign state, an international organisation established by the governments of states or an institution of any such government or international organization, the National DNA Data Bank Manager may compare the DNA profile with those in the DNA Data Bank in order to determine whether it is already contained in the Data Bank and may then communicate through Central Bureau of Investigation or any other appropriate agency of the Central Government and with the prior approval of the Central Government information referred to in subsection (1) of section 35 to that government, international organisation or institution.</p> <p>(2) The DNA Data Bank Manager may, on the request of a law enforcement agency in the course of the investigation of a specified offence, communicate through Central Bureau of Investigation or other appropriate agency of the Central Government and with the prior approval of the Central Government any DNA profile contained in the National DNA Data Bank to the government of a foreign State, an international organisation established by the governments of states, or an institution of any such government or international organisation, as the case may be.</p>	<p>Sec. 6 of the DNA Identification Act: Revised Statutes of Canada</p>
<p>Retention and expunction of records.</p>	<p>37. (1) Subject to sub-sections (2) and (3), the information in the offenders' index pertaining to a convict shall be kept on a permanent basis.</p> <p>(2) The DNA Data Bank Manager shall, on receiving a</p>	

	<p>certified copy of the order of the court that has become final establishing that the person in respect of whom the information is included in the offenders' index has been acquitted of the charge against him, expunge forthwith the DNA profile of such person from the offenders' index, under intimation to the individual concerned, in such manner as may be prescribed.</p> <p>(3) The DNA Data Bank Manager shall, on receiving a certified copy of the order of the court that has become final establishing that the conviction of a person in respect of whom the information is included in the offenders' index has been set aside, expunge forthwith the DNA profile of such person from the offenders' index, under intimation to the individual concerned, in such manner as may be prescribed.</p>	<p>Sec. 9 of the DNA Identificatio n Act: Revised Statutes of Canada</p>
--	---	--

CHAPTER VIII CONFIDENTIALITY OF AND ACCESS TO DNA PROFILES, SAMPLES AND RECORDS		
Confidentiality of DNA profiles, DNA samples and records.	38. DNA profiles and DNA samples and records thereof forwarded to or in custody of the DNA Data Bank Manager or DNA laboratory or any other person or authority under this Act shall be kept as confidential.	
Use of DNA profiles and DNA samples and records.	39. All DNA profiles and DNA samples and records thereof shall be used solely for the purpose of facilitating identification of the perpetrator of a specified offence under Part I of the Schedule: Provided that such profiles or samples may be used to identify victims of accidents or disasters or missing persons or for purposes related to civil disputes and other civil matters listed in Part I of the Schedule or for other purposes as may be specified by the regulations made by the Board.	Sec. 4 of the DNA Identification Act: Revised Statutes of Canada
Availability of DNA profiles, DNA samples	40. Information relating to DNA profiles, DNA samples and records relating thereto shall be made available in the following instances, namely:- (a) for identification purposes in criminal cases, to law enforcement agencies; (b) in judicial proceedings, in accordance with the rules of admissibility of evidence; (c) for facilitating decisions in cases of criminal prosecution; (d) for defence purposes, to the accused to the extent relevant and in connection with the case in which such accused is charged; (e) for creation and maintenance of a population	US Code collection: Title 42, Chapter 136, Subchapter IX, Part A (DNA Identification), Sec. 14132

	<p>statistics database that is to be used, as prescribed, for the purposes of identification research, protocol development or quality control provided that it does not contain any personally identifiable information and does not violate ethical norms; or</p> <p>(f) in the case of investigations related to civil dispute and other civil matter listed in Part I of the Schedule, to the concerned parties to the said civil dispute or civil matter and to the concerned judicial officer or authority; or</p> <p>(g) for any other purposes, as may be prescribed.</p>	
<p>Access to information in DNA Data Bank for operation and training.</p>	<p>41. Access to any information contained in the DNA Data Bank shall be made available to a person or class of persons that the DNA Data Bank Manager considers appropriate for-</p> <p>(a) the sole purpose of proper operation and maintenance of the DNA Data Bank; and</p> <p>(b) training purposes.</p>	<p>Sec. 7 DNA Identification Act: Revised Statutes of Canada</p>
<p>Access to information in DNA Data Bank for one time keyboard search.</p>	<p>42. Any person who is authorised to access an index of the DNA Data Bank, for the purpose of including the information of DNA identification records or DNA profile in that index, may also access that index for purposes of carrying out one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal investigation purpose except for a DNA sample voluntarily submitted solely for elimination purposes.</p> <p>Explanation: For the purposes of this section, “one time keyboard search” means a search under which information obtained from a DNA sample is compared with information in the index of the DNA Data Bank</p>	<p>The Justice for All Act, USA 2004.</p>

	without resulting in the information obtained from the DNA sample being included in the index.	
Restriction on access to information in DNA Data Bank.	<p>43. Access to the information in the National DNA Data Bank shall be restricted in the manner as may be prescribed if the information relates to a DNA profile derived from-</p> <p>(a) a victim of an offence which forms or formed the object of the relevant investigation, or</p> <p>(b) a person who has been excluded as a suspect in the relevant investigation.</p>	Sec. 8 DNA Identification Act: Revised Statutes of Canada
Restrictions on use of information on DNA profiles, samples and data identification records.	<p>44. (1) No person who receives the DNA profile for entry in the DNA Data Bank shall use it or allow it to be used for purposes other than those provided for under this Act.</p> <p>(2) No person shall, except in accordance with the provisions hereinabove, communicate or authorize communication or allow to be communicated a DNA profile that is contained in the DNA Data Bank or information that is referred to in sub-section (1) of section 35.</p> <p>(3) No person to whom information is communicated or who has access to information under this Act shall use that information for any purpose other than the purpose for which the communication or access is permitted under the provisions of the Act.</p>	Sections 6 and 8 of the DNA Identification Act: Revised Statutes of Canada.
Post-conviction DNA testing	<p>45. Any individual undergoing a sentence of imprisonment or under sentence of death pursuant to conviction for an offence may apply to the court which convicted him for an order of DNA testing of specific evidence and the court shall order such DNA testing of</p>	US Code collection: Title 18, Part II,

	<p>the said evidence if the court is satisfied that all of the following apply, namely:-</p> <p>(a) the applicant has asserted on oath that he is actually innocent of the offence for which he is under a sentence of imprisonment or death;</p> <p>(b) the specific evidence to be tested was secured in relation to the investigation or prosecution of the offence in respect of which the applicant makes the assertion under this section;</p> <p>(c) the specific evidence to be tested is in the possession of the Government and has been subjected to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect to the proposed DNA testing;</p> <p>(d) the specific evidence to be tested-</p> <p>(i). was not previously subjected to DNA testing and the applicant did not knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of coming into force of this Act;</p> <p>(ii). was not previously subjected to DNA testing and the applicant had not requested DNA testing of that specific evidence in a prior motion for post-conviction DNA testing; or</p> <p>(iii). was previously subjected to DNA testing and the applicant is requesting the DNA testing by use of a new method or technology that would provide results that have a reasonable probability of contradicting prior results;</p> <p>(e) the DNA testing proposed by the applicant is reasonable in its scope, uses scientifically sound methods and is consistent with accepted forensic</p>	<p>Chapter 228A (Post-conviction DNA Testing), Sec. 3600</p>
--	--	--

	<p>practices;</p> <p>(f) the identity of the perpetrator was at issue in the trial in which the applicant was convicted;</p> <p>(g) the applicant has submitted a theory of defence that is not inconsistent with an affirmative defence presented at the trial and that would establish the actual innocence of the applicant in respect of the specified offence for which he has made assertion of innocence on oath;</p> <p>(h) the proposed DNA testing of the specific evidence may produce new material evidence that would support the theory of defence referred to by the applicant and raise a reasonable probability that the applicant did not commit the offence; and</p> <p>(i) the applicant certifies in his application that the applicant shall provide his DNA sample for the purposes of comparison.</p>	
--	---	--

CHAPTER IX		
FINANCE, ACCOUNTS AND AUDIT		
Grants and loans by Central Government.	<p>46. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.</p>	Sec. 9 of SERB Act, 2008 (61 of 2008)
DNA Profiling Board Fund	<p>47. (1) There shall be constituted a Fund to be called the Human DNA Profiling Board Fund and there shall be credited to the Fund-</p> <ul style="list-style-type: none"> (a) any grants and loans made to the Board by the Central Government under section 46; (b) all sums received by the Board including fees, charges or donations from any other source; (c) recoveries made of the amounts granted from the Fund; and (d) any income from investment of the amount of the Fund. <p>(2) The financial power for the application of monies of the Fund shall be delegated to the Board in such manner as may be prescribed and as may be specified by the regulations made by the Board.</p> <p>(3) The Fund shall be applied by the Board, in the manner that it thinks fit, for meeting-</p> <ul style="list-style-type: none"> (a) expenses on the object and for the purposes authorised by this Act; (b) salaries, allowances and other expenses of the Members, officers and other employees of the Board; (c) remunerations of the consultants; and (d) expenses of the Board in the discharge of its 	Sec. 10 of SERB Act, 2008 (61 of 2008)

	functions under this Act.	
Budget.	48. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.	Sec. 11 of SERB Act, 2008 (61 of 2008)
Annual report.	49. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its annual report giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government.	Sec. 12 of SERB Act, 2008 (61 of 2008)
Accounts and audit.	<p>50. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Act.</p> <p>(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller</p>	Sec. 13 of SERB Act, 2008 (61 of 2008)

	and Auditor-General of India. (4) The Board shall furnish to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report.	
Annual report and auditor's report to be laid before Parliament	51. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.	Sec. 14 of SERB Act, 2008 (61 of 2008)

CHAPTER X		
OFFENCES AND PENALTIES		
Penalties for unauthorised disclosure of information in DNA Data Bank.	52. Whoever by virtue of employment or official position or otherwise has in his possession, or has access to, individually identifiable DNA information contained in the DNA Data Bank and willfully discloses it in any manner to any person or agency not entitled to receive it under this Act or any other law for the time being in force, shall be punishable with simple imprisonment for a term which shall not be less than one month but which may be for a term which may extend to three years and shall also be liable for fine which may extend to one lakh rupees.	DNA Identification Act 1994 of USA. US Code collection: Title 42, Chapter 136, Sec. 14133 and Sec. 14135e Sec. 96 of Factories Act, 1948.
Penalties for obtaining information from DNA Data Bank without authorisation.	53. Whoever, without authorisation, willfully obtains individually identifiable DNA information from the DNA Data Bank shall be punishable with simple imprisonment for a term which shall not be less than one month but which may be for a term which may extend to three years and shall also be liable for fine which may extend to one lakh rupees.	DNA Identification Act 1994 of USA. US Code collection: Title 42, Chapter 136, Sec. 14133 and Sec. 14135e Sec. 96 of Factories Act, 1948.
Penalties for unlawful access of information in DNA Data Bank	54. Whoever accesses information stored in the DNA Data Bank otherwise than in accordance with the provisions of this Act shall be punishable with simple imprisonment for a term which shall not be less than one month but which may be for a term which may extend to two years and shall also be liable for fine which may extend to fifty thousand rupees.	DNA Identification Act 1994 of USA. US Code collection: Title 42, Chapter 136,

		Sec. 14133 and Sec. 14135e Sec. 96 of Factories Act, 1948.
Penalties for providing or using DNA sample or result without authorisation.	55. Whoever knowingly provides a DNA sample or result thereof in any manner to any person not authorized to receive it or obtains or uses, without authorization, such sample or result of DNA analysis, shall be punishable with simple imprisonment for a term which shall not be less than one month but which may be for a term which may extend to three years and shall also be liable for fine which may extend to one lakh rupees.	DNA Identification Act 1994 of USA. US Code collection: Title 42, Chapter 136, Sec. 14133 and Sec. 14135e Sec. 96 of Factories Act, 1948.
Destruction, alterations, contamination, tampering with biological evidence	56. Whoever knowingly and intentionally destroys, alters, contaminates or tampers with biological evidence which is required to be preserved under any law for the time being in force with the intention to prevent that evidence from being subjected to DNA testing or to prevent the production or use of that evidence in a judicial proceeding, shall be punishable with simple imprisonment for a term which shall not be less than one month but which may be for a term which may extend to five years and shall also be liable for fine which may extend to two lakh rupees.	US Code collection: Title 18, Part II, Chapter 228A (Post-conviction DNA Testing), Sec. 3600A
Offences by companies or institutions.	57. (1) Where an offence has been committed by a company or institution, every person who at the time the offence was committed was in charge of, and was responsible to, the company or institution for the conduct of the business of the company or institution shall be deemed to be guilty of the offence and shall be	Sec, 30 of TRAI Act 1997 (24 of 1997)

	<p>liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub-section shall render any such person liable to any punishment for the offence if such person has proved that the offence was committed without his knowledge or that such person had exercised all due diligence to prevent the commission of such offence.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence has been committed by a company or institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company or institution, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.</p> <p>Explanation- for the purposes of this section:</p> <p>(a) “company” means any corporate body and includes a firm or other association of individuals; and</p> <p>(b) “director”, in relation to a firm, means a partner in the firm.</p>	
<p>Cognizance of certain offences</p>	<p>58. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder save on a complaint made by the Central Government or its officer or Board or its officer or any other person authorised by them:</p> <p>Provided that nothing contained in this sub-section shall prevent an aggrieved person from approaching a</p>	

	<p>court, if upon his application to the Central Government or the Board, no action is taken by them within a period of three months from the date of receipt of the application.</p> <p>(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.</p>	<p>Sec. 34 of TRAI Act 1997 (24 of 1997)</p>
--	--	--

CHAPTER XI MISCELLANEOUS		
Chairperson, Members, Officers to be public servants	59. The Chairperson, other Members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.	Sec. 26 of TRAI Act 1997 (24 of 1997) 45 of 1860
Protection of action taken in good faith	60. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or Board or any Member, officer or other employee of the Board for anything which is done or intended to be done in good faith under this Act or the rules or regulations made hereunder.	Sec. 28 of TRAI Act 1997 (24 of 1997)
Delegation of powers.	61. (1) The Board may, by general or special order in writing, delegate to the Chairperson or any other Member or officer of the Board subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 66) as it may deem necessary.	Sec. 33 of TRAI Act 1997 (24 of 1997)
Exemption from tax on wealth and income, profits and gains	62. Notwithstanding anything contained in- (a) the Wealth-tax Act, 1957; (b) the Income-tax Act, 1961; or (c) any other enactment for the time being in force relating to tax, including tax on wealth, income, profits or gains or the provision of services,- the Board shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.	Sec. 32 of TRAI Act 1997 (24 of 1997) 27 of 1957. 43 of 1961.

<p>Power of Central Government to supersede Board.</p>	<p>63. (1) If at any time the Central Government is of the opinion-</p> <p>(a) that, on account of circumstances beyond the control of the Board, it is unable to discharge the functions or perform the duties assigned to it by or under the provisions of this Act; or</p> <p>(b) that the Board has persistently defaulted in complying with any direction issued by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has suffered; or</p> <p>(c) that circumstances exist which render it necessary in the public interest to do so,</p> <p>the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification:</p> <p>Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board to make representations against the proposed supersession and shall consider the representations, if any, of the Board.</p> <p>(2) Upon the publication of a notification under subsection (1) superseding the Board,-</p> <p>(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;</p> <p>(b) all the powers, functions and duties which may,</p>	<p>Sec. 19 of The Spices Board Act, 1986.</p> <p>Clause 48 of The UID Bill, 2010.</p>
--	--	---

	<p>by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and</p> <p>(c) all property owned or controlled by the Board shall until the Board is reconstituted under sub-section(3), vest in the Central Government.</p> <p>(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Board by a fresh appointment of its Chairperson and other Members and in such case any person or persons who had vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for reappointment.</p> <p>(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.</p>	
<p>Powers to issue directions</p>	<p>64. The Board shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.</p>	<p>Sec. 20 of APEDA Act (2 of 1986)</p>
<p>Power of Central Government to make rules</p>	<p>65. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p>	<p>Sec. 35 of TRAI Act 1997 (24 of 1997)</p>

- | | | |
|--|--|--|
| | <ul style="list-style-type: none">(a) the allowances that the Members of the Board shall receive, under sub-section (6) of section 5;(b) the conditions to be fulfilled for accord of approval for a DNA laboratory or for the renewal thereof, under section 15;(c) the officials who are authorized to receive the communication pertaining to information as to whether a person's DNA profile is contained in the offenders' index, under sub-section (2) of section 35;(d) the manner in which the DNA profile of a person from the offenders' index shall be expunged under sub-section (2) of section 37;(e) the manner in which the DNA profile of a person from the offenders' index shall be expunged, under sub-section (3) of section 37;(f) use of population statistics database created and maintained for the purposes of identification research, protocol development or quality control under clause (e) of section 40;(g) other purposes, if any, for which the information relating to DNA profiles, DNA samples and records relating thereto shall be made available, under clause (g) of section 40;(h) the manner in which access to the information in the DNA Data Bank shall be restricted under section 43;(i) the manner in which the financial power for the application of monies of the Fund shall be delegated to the Board under sub-section (2) of section 47;(j) the form in which and the time at which the Board shall prepare its budget under section 48 and its annual report under section 49;(k) the form of annual statement of accounts under | |
|--|--|--|

	<p>sub-section (1) of section 50 and the date before which audited copy of the accounts shall be furnished to the Central Government under sub-section (4) of that section; and</p> <p>(l) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules for carrying out the purposes of this Act.</p>	
<p>Powers of Board to make regulations</p>	<p>66. (1) The Board may, by notification make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-</p> <p>(a) the times and places at which the Board shall meet, and the procedure it shall observe in regard to the transaction of business at its meetings (including quorum at such meetings), under sub-section (1) of section 6;</p> <p>(b) the powers and duties of the Chief Executive Officer under sub-section (4) of section 10;</p> <p>(c) the terms and conditions of appointment of consultants to the Board under sub-section (3) of section 11;</p> <p>(d) the list of applicable instances of human DNA profiling and the sources and manner of collection of samples in addition to the lists contained in the Schedule under clause (w) of section 12;</p> <p>(e) the form and manner in which and the fee along with which every DNA laboratory shall make an application for approval and subsequent periodical renewals thereof for the purpose of</p>	

	<p>undertaking DNA procedures under sub-section(1) of section 14;</p> <p>(f) the standards that every DNA laboratory shall follow for quality assurance for DNA testing under clause (a) of section 18;</p> <p>(g) the documented quality system that every DNA laboratory shall establish and maintain under clause (b) of section 18;</p> <p>(h) the quality manual with details that every DNA laboratory shall establish and maintain under clause (c) of section 18;</p> <p>(i) the technical and managerial staff that shall be employed, and the resources required to discharge duties and functions by such technical and managerial staff that shall be made available, by every DNA laboratory, under sub-section (1) of section 19;</p> <p>(j) other qualifications, if any, that the person heading every DNA laboratory shall possess under sub-section (2) of section 19;</p> <p>(k) the qualifications, training and experience commensurate with the job requirements that the staff of every DNA laboratory shall possess under sub-section (1) of section 20;</p> <p>(l) the records on the relevant qualifications, training, skills and experience of the technical personnel employed by every DNA laboratory that the Head of such laboratory shall maintain under sub-section (2) of section 20;</p> <p>(m) the facilities that every DNA laboratory shall possess for providing adequate security and minimizing contamination of DNA samples under section 21;</p> <p>(n) the documented evidence control system that every DNA laboratory shall possess and shall follow under section 22;</p>	
--	---	--

	<ul style="list-style-type: none">(o) the validation process that every DNA laboratory shall possess and the manner in which such validation shall be carefully controlled and monitored under sub-sections (1) and (2) of section 23;(p) the written analytical procedures that every DNA laboratory shall possess and shall follow under section 24;(q) the indices that every DNA laboratory shall prepare under section 25;(r) the equipment suitable for the methods employed that every DNA laboratory shall use under section 26;(s) the standards in accordance with which every DNA laboratory shall conduct audits under section 27;(t) the infrastructure that a DNA laboratory shall possess under section 28;(u) the fee not exceeding that which a DNA laboratory shall charge for conducting DNA procedure under section 29;(v) the qualified technical personnel that a DNA laboratory shall employ and the institutions and the intervals at which they shall undergo regular training in DNA related subjects under section 30;(w) the security system and system for safety of personnel that a DNA laboratory shall install under section 31;(x) the format in which the National DNA Data Bank shall receive DNA data from State DNA Data Banks and shall store the DNA profiles from different laboratories under sub-section (3) of section 32;(y) other DNA indices that shall be maintained by every DNA Data Bank under clause (g) of sub-	
--	--	--

	<p>section (4) of section 32;</p> <p>(z) the standards in accordance with which information of data based on DNA analysis prepared by a DNA laboratory, and of records relating thereto shall be included in the indices under sub-section (5) of section 32;</p> <p>(za) the powers and duties of the DNA Data Bank Manager under sub-section (4) of section 33;</p> <p>(zb) the terms and conditions of appointment of consultants to the DNA Data Banks under sub-section (3) of section 34;</p> <p>(zc) the other purposes in addition to identification of victims of accidents, disasters or missing persons or for purposes related to civil disputes and other civil matters listed in Part I of the Schedule for which records or samples may be used under section 39;</p> <p>(zd) the manner in which the financial power for the application of monies of the Fund shall be delegated to the Board under sub-section (2) of section 47;</p> <p>(ze) other laws, if any, to be included under item (viii) of para B of Part I of the Schedule; and</p> <p>(zf) other civil matters, if any, to be included under item (vii) of para C of Part I of the Schedule; and</p> <p>(zg) authorization of other persons, if any, for collection of non-intimate body samples and for performance of non-intimate forensic procedures, under Part II of the Schedule.</p>	
<p>Rules and regulations to be laid before Parliament.</p>	<p>67. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the</p>	<p>Sec. 37 of TRAI Act 1997 (24 of 1997)</p>

	<p>session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p>	
<p>Act to have overriding effect.</p>	<p>68. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.</p>	<p>Sec. 89 of The Food Safety and Standards Act, 2006.</p>
<p>Civil courts not to have jurisdiction</p>	<p>69. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.</p>	<p>Sec. 72 of The Food Safety and Standards Act, 2006.</p>
<p>Application of other laws not barred.</p>	<p>70. (1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.</p> <p>(2) Subject to provisions of sub-section (1) of this section, the provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent with the provisions of any other law for the time being in force.</p>	<p>Sec. 38 of TRAI Act 1997 (24 of 1997)</p>
	<p>71. (1) If any difficulty arises in giving effect to</p>	

<p>Power to remove difficulties.</p>	<p>the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:</p> <p>Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>	<p>Sec. 39 of TRAI Act 1997 (24 of 1997)</p> <p>Sec. 38 of ASIR Act- (73 of 2010)</p>
--------------------------------------	--	---

SCHEDULE
LIST OF APPLICABLE INSTANCES OF HUMAN DNA PROFILING AND
SOURCES AND MANNER OF COLLECTION OF SAMPLES FOR DNA
PROFILING

Part I: List of applicable instances of human DNA profiling
(Section 2, 39, 40 and 66)

A. Offences under Indian Penal Code

B. Offences under special laws:

- (i) Immoral Traffic (Prevention) Act, 1956
- (ii) Medical Termination of Pregnancy Act, 1971
- (iii) Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- (iv) Protection of Women from Domestic Violence Act, 2005
- (v) Protection of Civil Rights Act, 1955
- (vi) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- (vii) Motor Vehicles Act, 1988
- (viii) Any other law as may be specified by the regulations **made by the Board**

C. Civil disputes and other civil matters:

- (i) Parental dispute (maternity or paternity)
- (ii) Issues relating to pedigree
- (iii) Issues relating to assisted reproductive technologies [surrogacy, *in vitro* fertilization (IVF), intrauterine implantation (IUI), etc.]
- (iv) Issues relating to transplantation of human organs (donor and recipient) under the Transplantation of Human Organs Act, 1994
- (v) Issues relating to immigration or emigration
- (vi) Issues relating to establishment of individual identity
- (vii) Any other civil matter as may be specified by the regulations **made by the Board**

D. Other offences or cases:

- (i) Medical negligence
- (ii) Unidentified dead bodies
- (iii) Identification of abandoned or disputed children, etc.

**Part II: Sources and manner of collection of samples for DNA
profiling**
(Sec 2 and 66)

A. Sources of samples for DNA profiling:

- (1) Scene of occurrence or crime
- (2) Tissue and skeleton remains
- (3) Clothing and other objects
- (4) Already preserved body fluids and other samples

B. Manner of collection of samples for DNA:

- (1) Medical Examination
- (2) Autopsy examination
- (3) Exhumation

Explanation:

- (a) Intimate body samples from living persons shall be collected, and intimate forensic procedures shall be performed, by a registered medical practitioner as defined in section 53 of Code of Criminal Procedure, 1973 who is familiar with DNA collection procedure required to be followed by the laboratory to whom the sample has to be forwarded.
- (b) Non-intimate body samples can be collected and non-intimate forensic procedure can be performed by the technical staff trained for the collection of samples for DNA test under the supervision of a medical officer or scientist or by any other person as specified in the regulations.