



Towards a genetic panopticon

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Towards a genetic panopticon-The DNA Bill will give the state untrammelled access to deeply personal and penetrating material

- The government's disdain for dissent, though, makes the potential introduction of the DNA Technology (Use and Application) Regulation Bill, 2018, for consideration by the Rajya Sabha an especially invidious proposition.

Problems with the draft Bill

- The draft statute, approved by the Union Cabinet in July, not only disregards the serious ethical dilemmas that are attendant to the creation of a national DNA database, but also, contrary to established wisdom, virtually treats DNA as infallible, and as a solution to the many problems that ail the criminal justice system.
- What's more, any infringement of civil liberties, caused by an almost indiscriminate collection of DNA, is seen as a legitimate trade-off made in the interests of ensuring superior justice delivery.
- But what the Bill fatally ignores is that the disproportionality of the DNA bank that it seeks to create, and the invasiveness of its purport and reach, imposes a Faustian bargain on the citizen.
- The genes encoded in deoxyribonucleic acid (DNA), which can be collected from blood, hair, skin cells and other such bodily substances, have undoubtedly proven to be an important tool in forensic science.
- Much like fingerprints, a person's DNA profile is unique (except in the case of identical twins) and can, therefore, help in establishing the identity of, say, a suspect.
- That only a small amount of genetic material is needed to create such a profile makes the form of evidence especially appealing to criminal investigators.
- And to be sure, across the world, the use of DNA evidence has helped exonerate a number of innocent people from wrongful conviction, and has also helped find the guilty party in complex investigations.

- The proposed law, however, is not only decidedly vague on how it intends to maintain this DNA Bank, but it also conflates its objectives by allowing the collection of DNA evidence not only in aid of criminal investigations but also to aid the determination of civil disputes.

Infringement of privacy

- When, in August 2017, a nine-judge bench of the Supreme Court in Justice K.S. Puttaswamy (Retd) v. Union of India declared that the Constitution recognises a fundamental right to privacy, it also explicated the various facets of this right.
- Significantly, it ruled that any meaningful right to privacy would include protection over the physical body.
- Indeed, a 2012 report filed by a group of experts on privacy, led by Justice A.P. Shah, found explicitly that a person's basic liberties stand violated by a compelled extraction of DNA from her body.
- To be sure, that the right to privacy is infringed does not mean that the government cannot under any circumstances gather DNA evidence.
- What it does mean is that such collection ought to be made under a legislative regime guided by principles of necessity and proportionality.
- That is, the state must show that there exists a legitimate reason for extracting DNA evidence, and that the extent and scope of such extraction does not disproportionately contravene a person's right to privacy.

The use of DNA evidence

- In its present draft, however, the Bill woefully falls short of meeting these tests.
- World over, the idea behind maintaining a DNA database is to help match and compare samples collected from a crime scene against a set of stored profiles, thereby helping in the identification of a potential suspect in a criminal investigation.
- India's Bill, though, seeks to make the DNA Bank available for a slew of unconnected purposes, including permitting its use in civil cases.
- Given that in India, even illegally obtained evidence is admissible in a court of law, so long as the relevance and genuineness of such material can be established, the Bill's failure to place sufficient checks on the use of DNA evidence collected in breach of the law makes the process altogether more frightening.
- To enact the law in its present form, therefore, would only add a new,

menacing weapon to the state's rapidly expanding surveillance mechanism.

- We cannot allow the benefits of science and technology to be privileged over the grave risks in allowing the government untrammelled access to deeply personal and penetrating material.

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