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## Towards a genetic panopticon: on DNA Technology Regulation Bill, 2018

### Context:-

- The use of DNA evidence in criminal investigations across the world, has helped exonerate a number of innocent people from wrongful conviction, and has also helped find the guilty party in complex investigations. No doubt India need a law to help regulate the manner and circumstances in which the state may be entitled to collect biological material from a person.
- However the **DNA Technology (Use and Application) Regulation Bill, 2018**, allow ***indiscriminate collection of DNA***, is seen as a legitimate trade-off made in the interests of ensuring superior justice delivery.
- 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.

### Highlights of the Bill:-

- The Bill regulates the use of DNA technology for establishing the identity of persons in respect of **criminal matters** (such as offences under the Indian Penal Code, 1860), and **civil matters** such as parentage

- **disputes, emigration or immigration, and transplantation of human organs.**
- The Bill establishes a **National DNA Data Bank** and **Regional DNA Data Banks**. Every Data Bank will maintain the following indices: (i) crime scene index, (ii) suspects' or undertrials' index, (iii) offenders' index, (iv) missing persons' index, and (v) unknown deceased persons' index.
- The Bill establishes a **DNA Regulatory Board**. Every DNA laboratory that analyses a DNA sample to establish the identity of an individual, has to be accredited by the Board.
- **Written consent** by individuals is required to collect DNA samples from them. Consent is not required for offences with punishment of more than seven years of imprisonment or death.
- The Bill provides for the **removal of DNA profiles of suspects** on filing of a police report or court order, and of undertrials on the basis of a court order. Profiles in the crime scene and missing persons' index will be removed on a written request.

**Key Issues and Analysis or the Bill:-**

- **Infringement of privacy-** The Bill requires consent of the individual when DNA profiling is used in criminal investigations and identifying missing persons. However, consent requirements have not been specified in case of DNA profiling for civil matters.

- This is not inline with the recent **nine-judge bench K.S. Puttaswamy judgment** which declared that the Constitution recognises a fundamental right to privacy.
- The right to privacy is not contravene with gathering of DNA evidence however such collection ought to be made under a legislative regime guided by principles of necessity and proportionality.
- **The Use of DNA Evidence-** India's Bill seeks to make the DNA Bank available for a slew of unconnected purposes, including permitting its use in civil cases against the global practice where, the idea behind maintaining a DNA database is to help in the identification of a potential suspect in a criminal investigation.
- **No Sufficient checks on the misuse of DNA evidence-** 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.
  - The Bill potentially allows DNA evidence to be used for any other purpose that may be specified through subsequent regulations, thereby according to the state a potential power to create a "genetic panopticon".
  - As a result, the state will effectively have at its disposal the ability to profile every one of its citizens.

- **Removal of DNA Profile-** DNA laboratories prepare DNA profiles and then share them with DNA Data Banks. The Bill specifies the process by which DNA profiles may be removed from the Data Banks.
  - However, the Bill does not require DNA laboratories to remove DNA profiles. It may be argued that such provisions be included in the Bill and not left to regulations.

**Way Ahead:-**

- The Bill should be satisfy the **three-fold test as held by Supreme Court in K.S. Puttaswamy judgment** to override privacy by the state-
  - Legality – existence of a law
  - Legitimate state aim – a guarantee against arbitrary state actions
  - Proportionality – a rational nexus between the objectives and means to achieve them.
- The bill also address the above cited misuse of the DNA evidence and **ensure that the evidence can only be used for the purposes of identification and not for determining personal characteristics, including medical conditions.**

**THANK YOU**

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