

WHEN SCIENCE MEETS THE CONSTITUTION: CONSTITUTIONAL LIMITS ON THE COLLECTION AND USE OF DNA EVIDENCE IN INDIA

by

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Abstract

DNA profiling has moved from an exceptional forensic tool to a routine feature of Indian criminal and civil adjudication, yet the rules on how samples are taken, held and used are scattered across the Criminal Procedure (Identification) Act, 2022, the Bharatiya Nagarik Suraksha Sanhita, 2023 and judicial improvisation. This article argues that the constitutional question is two questions: whether the State may compel a sample, and what it may later do with the profile. The Article 20(3) testimonial divide answers the first in part and the second not at all. Article 21, read through the Puttaswamy proportionality test, governs both. Drawing on criminal, civil and comparative authority, the article shows that Indian law meets the legality limb weakly, the necessity limb rarely and the safeguards limb hardly at all, and proposes a statutory structure built on judicial authorisation, purpose limitation, accredited custody and time-bound retention.

Keywords: DNA evidence; Article 20(3); Right to Privacy; Proportionality; Criminal Procedure (Identification) Act, 2022.

I. Introduction

A drop of blood, a cheek swab or a single hair now carries more weight in an Indian courtroom than many eyewitnesses do. The Supreme Court has described DNA testing as scientifically

accurate for over two decades,¹ and demand for it has spread well beyond rape and murder trials into paternity disputes, succession claims and divorce petitions.² The law that governs how these samples are obtained has not kept pace. A police officer who wants a suspect's blood leans on a medical-examination provision drafted for another purpose. A Magistrate asked to order a child's genetic test relies on general powers and on a line of precedent that disagrees with itself. Parliament took up a dedicated DNA statute in 2019 and withdrew it four years later, leaving the field to general criminal procedure.³

This article takes a position. The constitutional limits on DNA evidence operate at two moments. The first is collection. The second is what I will call the afterlife of the profile: its storage, its comparison with other profiles, its sharing and its use against someone other than the person who gave the sample. Indian doctrine has spent almost all its energy on the first moment, and within it on a single question, whether the sample is testimonial for the purposes of Article 20(3). That question matters, but it does not exhaust the Constitution. DNA identifies, and it also informs. It discloses kinship, ancestry and health predisposition, and it does so about people who were never accused and never consented.

Part II examines Article 20(3) and the testimonial divide. Part III maps the statutory routes by which a sample is now taken. Part IV applies the proportionality framework of *Puttaswamy*. Part V turns to civil litigation, where the stakes are different but no smaller. Part VI considers reliability and the admissibility of profiles, Part VII draws on comparative experience, and Part VIII proposes a reform structure.

II. Article 20(3) and the Limits of the Testimonial Divide

Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. The Court first read that guarantee narrowly. In *M.P. Sharma*, an eight-judge bench held that a search warrant for documents did not make the holder a witness against

¹ *Kamti Devi v. Poshi Ram*, (2001) 5 SCC 311.

² On the history of the technique and the disputes over its reliability, see Michael Lynch et al., *Truth Machine: The Contentious History of DNA Fingerprinting* (University of Chicago Press, 2008); Erin Murphy, *Inside the Cell: The Dark Side of Forensic DNA* (Nation Books, 2015).

³ The DNA Technology (Use and Application) Regulation Bill, 2019 was introduced in the Lok Sabha on 8 July 2019, examined by the Parliamentary Standing Committee, and later withdrawn. See Department-Related Parliamentary Standing Committee on Science and Technology, Environment, Forests and Climate Change, *Three Hundred and Nineteenth Report on the DNA Technology (Use and Application) Regulation Bill, 2019* (Rajya Sabha Secretariat, 2021). An earlier draft was reviewed in Law Commission of India, *Report No. 271: Human DNA Profiling: A Draft Bill* (July 2017).

himself.⁴ The decisive statement came in *Kathi Kalu Oghad*, where eleven judges separated testimony from physical evidence. To be a witness, they said, is to furnish evidence by conveying personal knowledge about the facts in issue, and giving thumb impressions, specimen signatures or handwriting does not do that.⁵ Such exhibits identify. They do not narrate. The Court also declined to treat a specimen as testimonial merely because it later helps the prosecution, and the whole law of compelled sampling still rests on that refusal.

Two later decisions shaped how far the divide reaches. *Nandini Satpathy* carried the protection into police interrogation, so that the privilege can be claimed before a formal charge is framed.⁶ *Selvi* then confronted techniques that were not obviously physical: narcoanalysis, polygraph examination and the brain electrical activation profile. The Court held that their compulsory administration violates Article 20(3) and the guarantee of personal liberty under Article 21, because the subject is made to yield, through involuntary responses, information held in the mind.⁷ *Selvi* did not disturb *Kathi Kalu Oghad*. It restated the distinction, and it read the Explanation to section 53 of the Code of Criminal Procedure, 1973 (CrPC), which names DNA profiling among the permissible examinations, as incapable of stretching to the new techniques.⁸ The result is a settled account of collection. A blood sample, a buccal swab or a hair follicle is physical material. It says nothing through the mind of the person who gives it, so Article 20(3) is not engaged. I accept that as doctrine. My difficulty is with how much work it is asked to do.

Three limits deserve attention. First, the divide was built for exhibits that identify and do nothing more. A fingerprint tells an examiner who touched a surface. A DNA sample tells the laboratory that, and also, depending on what is sequenced, a good deal about ancestry, kinship and health. Courts have not asked whether information of that kind belongs on the physical side of a line drawn for thumb impressions. Forensic profiles are generally built on non-coding regions of the genome, which is why the identification label is defensible, but the sample from which a profile is drawn holds far more, and the law does not say what may be done with the rest.⁹ Second, Article 20(3) protects a person accused of an offence against being compelled in respect of that offence. It has nothing to say about a sample taken from a relative, a witness or a bystander, and

⁴ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

⁵ *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808.

⁶ *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

⁷ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

⁸ Code of Criminal Procedure, 1973 (Act 2 of 1974), § 53, Explanation; see also *Selvi*, *supra* note 7.

⁹ See Robin Williams & Paul Johnson, *Genetic Policing: The Use of DNA in Criminal Investigations* (Willan Publishing, 2008); Nuffield Council on Bioethics, *The Forensic Use of Bioinformation: Ethical Issues* (2007).

nothing about what happens to a profile after the trial ends. Third, *Selvi* itself rested partly on Article 21 and on mental privacy. That signals that the Court regards Article 20(3) as one component of a wider protection and not the whole of it.

None of this suggests that compulsory sampling is unconstitutional. It suggests that the question whether a sample is testimonial is the first question and not the last. Whether the State may take the sample, from whom, on whose order, and for how long it may keep what it learns are questions of Article 21. The next two Parts examine how the law currently answers them.

III. How a Sample Is Taken: The Statutory Routes

For most of the Code's life, no provision expressly allowed the police to obtain a body sample from an accused. The gap became visible in *Ram Babu Misra*, where the Court held that a Magistrate could not direct specimen handwriting from a person who had not been arrested, because the provision then in force did not allow it.¹⁰ Parliament responded in stages. Section 53 CrPC, after the 2005 amendment, lets a registered medical practitioner, at the request of a police officer, examine an arrested person and use reasonable force for the purpose, and its Explanation lists blood, semen, hair samples and modern scientific techniques including DNA profiling.¹¹ Section 53A, added at the same time, deals with the medical examination of a person accused of rape,¹² section 164A with examination of the victim,¹³ and section 311A with specimen signatures and handwriting from a person who has been arrested.¹⁴

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) carries these provisions forward. Sections 51 and 52 correspond to sections 53 and 53A, section 184 to section 164A, and section 349 to section 311A.¹⁵ Section 349 adds voice samples and finger impressions, which responds in part to the gap the Court identified in *Ritesh Sinha*, where a Magistrate was held competent to direct a voice sample in the absence of a statute and the matter was left to Parliament.¹⁶ The provision does not mention DNA.

The Criminal Procedure (Identification) Act, 2022 is the more consequential development. It replaced the Identification of Prisoners Act, 1920 and defines measurements to include finger

¹⁰ *State of U.P. v. Ram Babu Misra*, (1980) 2 SCC 343.

¹¹ Code of Criminal Procedure, 1973, § 53, as amended by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005).

¹² Code of Criminal Procedure, 1973, § 53A.

¹³ Code of Criminal Procedure, 1973, § 164A.

¹⁴ Code of Criminal Procedure, 1973, § 311A.

¹⁵ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), §§ 51, 52, 184, 349.

¹⁶ *Ritesh Sinha v. State of U.P.*, (2019) 8 SCC 1.

and palm impressions, photographs, iris and retina scans, and physical and biological samples and their analysis.¹⁷ Section 3 requires measurements from persons convicted of, or arrested for, specified offences. Its proviso is the only calibration: a person arrested for an offence that is not against a woman or a child, and that does not carry a minimum sentence of seven years, is not obliged to give biological samples.¹⁸ A police officer or prison officer may take the measurements, a Magistrate may order them under section 5, and resistance or refusal is treated as obstructing a public servant, in addition to the officer's power to take the measurement regardless.¹⁹ Records go to a central repository maintained by the National Crime Records Bureau and are kept for seventy-five years, and they may be shared with law enforcement agencies.²⁰

Read together, these provisions leave the constitutional position oddly layered. A suspect arrested for a serious offence may be sampled on the authority of the police, with no judicial order and no recorded finding of necessity. Where a Magistrate does act, he or she need only find it expedient to take measurements for an investigation or proceeding, which is a lower threshold than necessity. None of the provisions confines the sample to the investigation for which it was taken, and none obliges the officer to record why a biological sample, rather than a fingerprint or a photograph, is needed. These are not minor omissions. They are the conditions on which any privacy-conscious regime would be built, and their absence is what turns a settled evidentiary rule into an unsettled constitutional one.

IV. Privacy, Proportionality and the Legality Gap

Puttaswamy recognised privacy as a fundamental right flowing from Articles 14, 19 and 21, and treated both bodily integrity and informational self-determination as part of it.²¹ The right is not absolute. An intrusion must satisfy four requirements: it must have the authority of law, pursue a legitimate State aim, be proportionate to that aim, and carry procedural safeguards against

¹⁷ Criminal Procedure (Identification) Act, 2022 (Act 11 of 2022), § 2(1)(b). The Act repealed the Identification of Prisoners Act, 1920.

¹⁸ Criminal Procedure (Identification) Act, 2022, § 3 and proviso.

¹⁹ Criminal Procedure (Identification) Act, 2022, §§ 5, 6. The offence referred to is that under § 186 of the Indian Penal Code, 1860, corresponding to § 221 of the *Bharatiya Nyaya Sanhita*, 2023.

²⁰ Criminal Procedure (Identification) Act, 2022, § 4; Criminal Procedure (Identification) Rules, 2022.

²¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. The decision overruled *M.P. Sharma, supra* note 4 and *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, to the extent that they denied constitutional protection to privacy.

abuse.²² The Court has applied that framework to Aadhaar, to internet shutdowns and to restrictions on trade, and nothing in the doctrine exempts the criminal process. *Selvi*, decided seven years before *Puttaswamy*, had already read Article 21 as barring involuntary intrusions into mental privacy,²³ and *Maneka Gandhi* had long before required that any procedure affecting liberty be just, fair and reasonable.²⁴

Take legality first. For arrested persons the Identification Act supplies a statute, and the requirement is met in form. In substance, a law that authorises the taking of biological samples and their analysis, without saying what may be analysed, is vague about the very intrusion it permits. In civil litigation the position is weaker still, since courts order tests under general procedural powers and no statute speaks to bodily samples at all.

The aim of detecting crime is legitimate. Necessity is the harder limb. The proviso to section 3 shows some awareness of it, since it spares persons arrested for less serious offences. But the proviso is drawn by reference to the victim as well as the penalty. An offence against a woman or a child falls within the compulsory category whatever its gravity, so an arrest for a minor offence with a woman as complainant can invite a biological sample while a serious economic offence with no minimum sentence cannot. A classification of that kind is open to scrutiny under Article 14 as well as Article 21. *Anuradha Bhasin* required that restrictions use the least intrusive means available, and a regime that lets an officer take a biological sample without recording why a less intrusive measure would not serve falls short of that standard.²⁵

Safeguards are the weakest limb. Seventy-five years of retention is longer than the working life of most people from whom samples are taken. Destruction is available to a person who is acquitted after all appeals are exhausted or discharged without trial, but it is not automatic, and the Act creates no independent body to supervise the repository, audit access or hear complaints.²⁶ A person acquitted after six years of trial is left to petition for the removal of a record the State should have had no reason to keep. *Puttaswamy* insisted that safeguards be built

²² *Puttaswamy*, *supra* note 21 (plurality opinion of Chandrachud J.). The test was applied in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1; see also *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

²³ *Selvi*, *supra* note 7.

²⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; see also *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 (safeguards on arrest); Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India, 2019).

²⁵ *Anuradha Bhasin*, *supra* note 22.

²⁶ Criminal Procedure (Identification) Act, 2022, § 4; Criminal Procedure (Identification) Rules, 2022 (procedure for seeking destruction of records).

into the law and not left to executive discretion, and rules that make the data subject do the work do not meet that insistence.²⁷

The honest summary is that the present framework satisfies the formal requirement of a statute and little else. The next Part shows that civil litigation, which has no such statute, has produced a more candid but equally unsettled body of law.

V. DNA in Civil and Family Litigation

The most explicit judicial reasoning about DNA and the Constitution has come in cases where no crime is alleged. In *Goutam Kundu*, the Court held that a court should not direct a blood test as a matter of routine in a dispute over paternity, required a strong prima facie case, and refused to let a test be used to fish for evidence.²⁸ *Sharda v. Dharmpal* held that a court may order a medical examination of a spouse in matrimonial proceedings without breaching Article 21, but accepted that the court cannot physically compel the person and may draw an adverse inference from refusal.²⁹ *Banarsi Dass* and *Bhabani Prasad Jena* added that a court must weigh the interests of the parties and direct a test only where there is an eminent need, and that the likely consequences for the person tested, including a child, form part of that weighing.³⁰

A second line of authority points the other way. *Nandlal Wasudeo Badwaik* held that where a scientific DNA result conflicts with the presumption of legitimacy in section 112 of the Indian Evidence Act, 1872, the science must prevail.³¹ In *Dipanwita Roy*, the Court upheld an order for a DNA test in a divorce petition founded on adultery, treating the husband's need to prove his pleaded case as outweighing the privacy objection.³² In *Ashok Kumar*, the Court drew back. It restated that the presumption in section 112 is strong, that a test must not be ordered routinely, and that the court must consider the interests of the child.³³ The caution was repeated in *Aparna Ajinkya Firodia*, which stressed that the child's dignity and privacy are distinct from those of the parents and that a test should follow only where it is essential to decide the dispute and nothing else will serve.³⁴

²⁷ *Puttaswamy*, *supra* note 21.

²⁸ *Goutam Kundu v. State of W.B.*, (1993) 3 SCC 418.

²⁹ *Sharda v. Dharmpal*, (2003) 4 SCC 493.

³⁰ *Banarsi Dass v. Teeku Dutta*, (2005) 4 SCC 449; *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women*, (2010) 8 SCC 633.

³¹ *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*, (2014) 2 SCC 576; Indian Evidence Act, 1872, § 112, corresponding to Bharatiya Sakshya Adhiniyam, 2023, § 116.

³² *Dipanwita Roy v. Ronobroto Roy*, (2015) 1 SCC 365.

³³ *Ashok Kumar v. Raj Gupta*, (2022) 1 SCC 20.

³⁴ *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, 2023 SCC OnLine SC 161.

These lines are less contradictory than they appear. Read together they ask one question: who must justify the intrusion, and to what standard? Where the party seeking the test has already placed credible, independent material before the court, the cases allow it. Where the test is itself the only source of the case, they refuse it. That is a proportionality inquiry in all but name, and the Court should say so. It would also resolve an oddity. The Court's most careful privacy reasoning sits in cases where the State is absent, while in criminal cases, where the State is the applicant and liberty is at stake, the reasoning is thinnest.

Two features of the civil cases deserve emphasis. The first is that the person most affected by the test, usually a child, is almost never heard. A court that orders a genetic test of a child decides on behalf of someone who has no voice in the proceeding, and the result may reorder the child's family, inheritance and identity. Bodily integrity and dignity are part of Article 21,³⁵ and the child holds them in her own right. The second is that the adverse inference from refusal, which *Sharda* treats as the alternative to compulsion, is a soft form of coercion. Section 114 of the Evidence Act, now section 119 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), lets a court presume that withheld evidence would have been unfavourable.³⁶ A litigant who knows that refusal will be read against her has not freely chosen to decline, and the law should recognise that the choice is constrained.

VI. Reliability, Custody and the Use of Profiles at Trial

Collecting a sample lawfully is one task. Trusting what is done with it is another. Indian courts have accepted DNA evidence in the gravest cases, including *Mukesh*, where the profile linked the accused to the victim in the Delhi gang rape and murder.³⁷ The Court has also reminded trial judges that a DNA report is expert opinion under section 45 of the Evidence Act, now section 39 of the BSA, and carries the weight of any such opinion: it corroborates, and its value depends on the integrity of the process that produced it.³⁸ In *Rahul v. State of Delhi*, the Court set aside convictions, including a death sentence, in a case of child rape and murder after finding that the prosecution could not show that the samples had been collected, sealed and stored without risk of contamination.³⁹ In *Krishan Kumar Malik*, the Court considered the prosecution's omission to

³⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

³⁶ Indian Evidence Act, 1872, § 114, illus. (h); Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), § 119.

³⁷ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

³⁸ Indian Evidence Act, 1872, § 45; Bharatiya Sakshya Adhiniyam, 2023, § 39.

³⁹ *Rahul v. State of Delhi*, (2023) 1 SCC 83.

obtain a DNA profile of the accused in a rape trial and treated it as bearing on the weight of the remaining evidence and not as a bar to conviction.⁴⁰

These cases show why reliability is a constitutional concern. Article 21 demands a fair procedure, and a conviction that rests on a profile nobody can trace from the scene to the laboratory is not fairly obtained. India has no statutory chain-of-custody requirement for DNA samples and no statutory accreditation regime for forensic laboratories. Compliance depends on departmental manuals and on the willingness of trial courts to ask questions. The Bill of 2019 would have created an accreditation scheme and a regulatory board. Its withdrawal leaves trial judges to do case by case what a statute should have done once.

The remedy for unlawful collection is the second weak point. Indian courts follow the rule in *Pooran Mal* and *R.M. Malkani*: relevant evidence is admissible even if it was obtained through an illegal search or seizure, and the court's concern is with relevancy and not with the manner of acquisition.⁴¹ The exceptions arise where a constitutional guarantee such as Article 20(3) is infringed, which is why *Selvi* could treat the results of involuntary testimonial tests as barred.⁴² For DNA the consequence is awkward. Because compelled blood or saliva is physical evidence outside Article 20(3), a sample taken without proper authority is still likely to be admitted. A privacy right that carries no consequence for its violation at trial is a weak limit. The reasoning in *Puttaswamy* invites the Court to revisit the rule, at least for intrusions on the body, but it has not yet done so.

VII. Comparative Perspectives

Comparative practice helps on one point and less on another. On the testimonial question, the law elsewhere runs largely with India. In *Schmerber v. California*, the United States Supreme Court held that a blood sample drawn from a suspect was not testimonial and so fell outside the Fifth Amendment, though the intrusion still had to satisfy the Fourth Amendment's requirement of reasonableness.⁴³ The Supreme Court of Canada, in *R. v. Stillman*, treated the taking of bodily samples without consent as a serious breach of the protection against unreasonable search and seizure, and later upheld a statutory DNA warrant scheme that required judicial authorisation and

⁴⁰ *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130.

⁴¹ *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345; *R.M. Malkani v. State of Maharashtra*, (1973) 1 SCC 471.

⁴² *Selvi*, *supra* note 7.

⁴³ *Schmerber v. California*, 384 U.S. 757 (1966).

a balancing of the interests at stake.⁴⁴ The disagreement is not about whether a sample is testimonial. It is about who authorises the intrusion and on what standard.

In *Maryland v. King*, the American Court upheld, by a narrow majority, the swabbing of persons arrested for serious offences as a booking procedure comparable to fingerprinting.⁴⁵ The dissent warned that the identification rationale concealed an investigative purpose. India's Identification Act reflects the majority's logic but not its limits. The Maryland statute was confined to arrests for serious offences, deferred analysis until a judicial determination of probable cause, and provided for expungement where no conviction followed. Courts abroad have also had to decide what counts as consent or abandonment, since police can sometimes obtain DNA from a discarded cup without any order, a practice criticised as a way round warrant requirements.⁴⁶

The European Court of Human Rights has been more demanding on retention. In *S. and Marper v. United Kingdom*, the Grand Chamber found that the indefinite retention of fingerprints, cell samples and DNA profiles of persons who had been acquitted or never prosecuted violated Article 8 of the European Convention, because the regime was blanket and indiscriminate.⁴⁷ In *Gaughran v. United Kingdom*, it reached the same result for a person convicted of a minor offence, holding that indefinite retention without review was disproportionate.⁴⁸ The United Kingdom responded in the Protection of Freedoms Act 2012 with graded retention periods tied to the offence and the age of the person, and with a Biometrics Commissioner to oversee the system.⁴⁹

The lesson from these systems is structural. Each treats the taking of a sample and the retention of a profile as separate interferences needing separate justification, each places a judicial or independent body in the process, and each accepts that the seriousness of the offence governs how far the State may go. Indian law does the first only in a formal sense. I do not suggest transplanting any of these models whole, since the Maryland statute, the Canadian warrant

⁴⁴ *R. v. Stillman*, [1997] 1 S.C.R. 607 (Can.); *R. v. S.A.B.*, 2003 SCC 60, [2003] 2 S.C.R. 678 (Can.).

⁴⁵ *Maryland v. King*, 569 U.S. 435 (2013).

⁴⁶ Elizabeth E. Joh, *Reclaiming "Abandoned" DNA: The Fourth Amendment and Genetic Privacy*, 100 Nw. U. L. Rev. 857 (2006).

⁴⁷ *S. and Marper v. United Kingdom*, (2009) 48 EHRR 50 (Grand Chamber), App. Nos. 30562/04 and 30566/04, 4 December 2008.

⁴⁸ *Gaughran v. United Kingdom*, App. No. 45245/15 (ECtHR, 13 February 2020).

⁴⁹ Protection of Freedoms Act 2012 (UK), Part 1, Chapter 1; Police and Criminal Evidence Act 1984 (UK), §§ 62, 63. On the earlier experience of the national database, see Helen Wallace, *The UK National DNA Database: Balancing Crime Detection, Human Rights and Privacy*, 7 EMBO Reports S26 (2006).

scheme and the British retention rules answer different institutional realities. What they share is the habit of writing the limits into the statute itself.

VIII. A Proposed Framework

The argument so far points to a statute with six features. None is novel, and each answers a gap identified above.

First, India needs a DNA-specific law and not a general identification statute with biological samples folded in. The 2019 Bill had real defects, notably the breadth of the offences covered by its databank and the weak independence of its regulator, but its decision to create a regulatory body and to fix standards for laboratories was right. The Standing Committee's report is a useful starting point, because it raised the privacy and misuse concerns that any successor must answer.⁵⁰

Second, non-consensual collection should require prior judicial authorisation, with a narrow exception for urgency followed by confirmation within a fixed time. The Magistrate should record why a biological sample is necessary for the investigation and why a less intrusive measure would not serve. That brings the process closer to the Canadian warrant and answers the least-intrusive-means requirement of *Anuradha Bhasin*. The seven-year and woman-or-child categories could survive as a presumption of seriousness but not as an automatic trigger.

Third, profiles should be held on a purpose-limited basis. Crime-scene profiles, profiles of convicted offenders and profiles of arrestees should sit in separate indices with different retention rules. Retention for persons not convicted should end on acquittal or discharge without the person having to apply, subject to a reasoned order of the court to the contrary. The seventy-five-year period should give way to graded periods linked to the offence.

Fourth, the sampling of third parties, including relatives, should be allowed only with consent or a specific judicial order, and the resulting profile should not be used for any purpose beyond the case for which the order was made. A relative's genetic information belongs to the relative. International instruments point the same way: they require that genetic data collected for forensic purposes be used only for those purposes and be deleted when no longer needed.⁵¹

⁵⁰ Standing Committee, *319th Report*, *supra* note 3.

⁵¹ Council of Europe, Committee of Ministers, *Recommendation No. R (92) 1 on the Use of Analysis of Deoxyribonucleic Acid (DNA) within the Framework of the Criminal Justice System* (10 February 1992); UNESCO, *International Declaration on Human Genetic Data* (16 October 2003).

Fifth, laboratories that report DNA evidence should be accredited by statute, and every sample should carry a custody record from the point of collection to the laboratory. A gap in that record should shift to the prosecution the burden of explaining why the report can still be trusted.

Sixth, in civil cases the Court's own tests from *Bhabani Prasad Jena* and *Aparna Ajinkya Firodia* should be codified: a test only on prima facie material, only where the dispute cannot be decided otherwise, and with independent representation for the child through a guardian ad litem.⁵²

IX. Conclusion

DNA evidence is neither the enemy of constitutional rights nor their automatic ally. In an accountable system it is among the most reliable tools for convicting the guilty and for clearing the innocent. In one that is not, it becomes a permanent register of bodies. The law as it stands answers the question whether the State may take a sample reasonably well, and the question what the State may do next hardly at all.

Article 20(3) will not close that gap. Article 21 can, but only if courts and Parliament treat collection and afterlife as separate constitutional moments, each needing its own justification. Until they do, each DNA order will be tested on the facts of the day, and the limits of the State's power over the body will be drawn one dispute at a time by judges who have not been given a statute to apply.

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⁵² *Bhabani Prasad Jena*, supra note 30; *Aparna Ajinkya Firodia*, supra note 34.