

# A DNA DATABANK FOR JUVENILES- LEGAL OR ILLEGAL

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*Abstract* : DNA fingerprinting and allied technologies, though helpful in criminal justice administration are contributing to creation of DNA databases consisting of the profiles of people whose DNA profiles are required for convicting or exonerating the accused from amongst many other uses. But how far it is relevant to retain the DNA profiles in the databases is an ongoing controversy upon which many learned minds have come to a consensus excepting that it is in the context of the profiles of adults. This research paper examines the manner in which, the necessity of and the time period for which the DNA profiles of delinquent Juveniles has to be collected and stored in databases. It also examines the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 considering the fact that there is no mention of this aspect of storing of DNA fingerprints of Juveniles in DNA databases. Therefore, this paper researches into the rights of juveniles in the technological era, with special reference to whether the DNA fingerprints of children who have committed serious offences or heinous crimes should be stored in DNA databases and trying to answer this primary question in the light of the principles of, 1. presumption of innocence, 2. right to privacy and confidentiality, 3. a fresh start and 4. Diversion as prescribed by The Juvenile Justice (Care and Protection of Children) Act, 2015, in order to achieve the goals, as enumerated in the Act.

*IndexTerms* - Child in conflict, DNA fingerprinting, DNA databases, Databank, Juvenile Justice Act.

## I. INTRODUCTION

Technology has played a very important role in the advancement of civilizations. From the times when humans discovered technology externally, to the times when humans discovered technology from within their bodies it has been a journey spanning 200000 and odd years<sup>1</sup>. Not every technology has revolutionized the immediately preceding years with subsequent, contiguous technological discoveries and inventions and commercially viable applications, as is seen in this era of human civilization. Starting with aviation technology, nuclear technology, space technologies, mass media & communication technologies and the information technology boom through nanotechnology applications, humankind has seen many a hitherto unknown form of technology emerge since the beginning of the 20<sup>th</sup> century. Another important technology that has found practical applications in a variety of fields and has developed an entirely novel manner of viewing the living organisms on earth is biotechnology<sup>2</sup> and its derivative genetic engineering or DNA Technology<sup>3</sup>. Since the time the structure of DNA<sup>4</sup> was propounded, and, its ability to replicate and conservative & stable nature<sup>5</sup> was deduced it has revealed how its Universality<sup>6</sup> can have far-reaching consequences which humanity is only trying to decipher from the various genetic codes that the DNA can form.<sup>7</sup> DNA being the universal genetic material (i.e. found in all living organisms) is responsible for the two apparently contradictory functions of genetic continuity and genetic evolution. This means that the DNA has the ability to carry forward with it the information contained within it with maximum accuracy and minimal error to another generation along with any mutation<sup>8</sup> which might have occurred within it. Hence the decoding of any information within the 'genetic codons' can reveal information which can be used to identify and relate any individual belonging to any species of organisms inhabiting the earth to the same species of the organism on earth. This is because the DNA of an individual/organism is unique to that particular individual (barring his/her twin) and can identify him/her, relate him/her to other members belonging to their families as well as reveal genetic information about him/her. This unique ability of DNA has been utilized to develop the principles behind the technologies of DNA fingerprinting or DNA profiling<sup>9</sup>. A DNA fingerprint reveals the entire genetic code of the individual and can be stored in a database in the form of a series of alphabets and can be used to identify the individual upon accessing the database and correctly matching it with any subsequently obtained fingerprint from the same individual at any other point of time in future. This aspect of DNA fingerprinting technology has developed the concept of DNA databases<sup>10</sup> wherein the

<sup>1</sup> [https://en.wikipedia.org/wiki/History\\_of\\_technology](https://en.wikipedia.org/wiki/History_of_technology)

<sup>2</sup> [https://en.wikipedia.org/wiki/History\\_of\\_biotechnology](https://en.wikipedia.org/wiki/History_of_biotechnology)

<sup>3</sup> [https://en.wikipedia.org/wiki/History\\_of\\_genetic\\_engineering](https://en.wikipedia.org/wiki/History_of_genetic_engineering);

<sup>4</sup> <https://en.wikipedia.org/wiki/A-DNA>

<sup>5</sup> <https://en.wikipedia.org/wiki/DNA>

<sup>6</sup> [https://en.wikipedia.org/wiki/Genetic\\_code](https://en.wikipedia.org/wiki/Genetic_code)

<sup>7</sup> <https://www.britannica.com/science/genetic-engineering>

<sup>8</sup> Mutations are the permanent changes in DNA sequences which generally alter the information carried by the DNA sequence.

<sup>9</sup> [https://en.wikipedia.org/wiki/DNA\\_profiling](https://en.wikipedia.org/wiki/DNA_profiling)

<sup>10</sup> [https://en.wikipedia.org/wiki/DNA\\_database](https://en.wikipedia.org/wiki/DNA_database)

DNA fingerprints of repeat offenders are being sought to be made available to the investigation agencies/authorities for faster detection and identification of the offender as well as to eliminate innocent suspects or to exonerate innocent suspects. Though not implemented yet in India, soon such a database containing the DNA fingerprints of criminals &/or suspects &/or undertrials will become a reality despite the lack of any specific laws on this behalf<sup>11</sup>.

This paper discusses another aspect of the contents of DNA databases, namely the DNA databases containing the DNA fingerprints of Juveniles as well as Juvenile delinquents. Curiously nowhere in the provisions of the laws relating to juveniles is there any mention of the necessity or the purposes of creating a DNA database of Juveniles. Though there are provisions for creating a DNA database for juvenile delinquents, there is a provision mandating the deletion of the DNA fingerprint records of delinquent juveniles except under certain circumstances. This paper emphasizes the need for a legal framework within which to carry out the creation of DNA databases of Juveniles as well as Juvenile delinquents. This paper also examines the current legislation related to Juvenile delinquents and the provisions contained within it in order to decide whether the legislation is commiserated with the goals as enumerated in the Juvenile Justice Act and if any amendments are to be carried out in it for administering justice to victims of Juvenile delinquents.

## II. RESEARCH METHODOLOGY

Research methodology followed is that of doctrinal research, the materials used as references were sourced from libraries and the internet. However, most of the material for this paper has come from the internet.

## III. JUVENILE: NATURE & DEFINITION & CONSIDERATIONS ACCORDED BY THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT

A juvenile is defined as a 'youth' or a 'young person'<sup>12</sup> and the juvenile is characterized by psychological immaturity or is considered undeveloped psychologically<sup>13</sup>. A juvenile is also defined as somebody who is not yet old enough to be regarded as an adult<sup>14</sup>. According to Sec.2 Clause (12) of the Juvenile Justice (Care & Protection of Children) Act, 2015<sup>15</sup>, a "child" means a person who has not completed eighteen years of age; and according to Sec 35 of the Act, a "juvenile" means a child below the age of eighteen years. A 'child' is defined as a person between birth and full growth, which is inclusive of a human fetus<sup>16</sup>. Therefore; the concept of a 'juvenile' includes the stages from the time a child is conceived to the age of eighteen years of the child. The Act defines under Sec.2 (13) that "child in conflict with law" means a child who is alleged or found to have committed an offense and who has not completed eighteen years of age on the date of commission of the offense.

The nature of such a 'juvenile' can be surmised from the fact that a 'fetus' is also considered to be alive and accorded the status of a child and is endowed with all the rights with which a child is endowed after taking birth. But, since the child is incapable of making informed decisions or incapable of knowing the consequences of its actions or in the case of a fetus where it has not come into existence in this world even, the decision-making capacity has to be vested with an adult parent/guardian/well-wisher of the child. Therefore, the definition of a juvenile can be summed up as an individual, who is vested with rights, but on account of being a fetus or on account of psychological immaturity, is incapable of exercising its rights, and requires care and protection to ensure its survival and development into adulthood.

A distinct category of children who are considered delinquents can be distinguished, who are characterized by the nature of their activities which are considered to be antisocial &/or deviant from acceptable social behavior which deviation may take the form of a classified 'Offence'<sup>17</sup> &/or may amount to a 'heinous offense'<sup>18</sup>. Such children are considered to be "**children in conflict with law**"<sup>19</sup> and depending on the nature and gravity of their offenses they are tried as children or as adults<sup>20</sup>. The trials of such delinquents have to be carried out according to certain principles laid down under The Act, which are the contents of Chapter 2 of The Act and which presupposes certain characteristics in a child due to its youth and therefore are in the nature of a built-in safeguards for the juvenile delinquents during the administration of The Act.

<sup>11</sup> <http://www.freejournal.in/mumbai/maharashtra-to-be-the-first-state-to-have-dna-databank-in-india/1138113>  
<https://timesofindia.indiatimes.com/city/mumbai/maharashtra-to-create-dna-database-of-offenders>

<sup>12</sup> <http://www.dictionary.com/browse/juvenile>

<sup>13</sup> <https://www.merriam-webster.com/dictionary/juvenile>

<sup>14</sup> <https://www.collinsdictionary.com/dictionary/english/juvenile>

<sup>15</sup> Referred to as, 'The Act', henceforth in this paper.

<sup>16</sup> <http://www.dictionary.com/browse/child?s=t>

<sup>17</sup> "Offence" means any act or omission made punishable by any law for the time being in force; Also available at <http://lawmin.nic.in/ld/P-ACT/1974/The%20Code%20of%20Criminal%20Procedure,%201973..pdf> & at <http://lawmin.nic.in/ld/P-ACT/1860/186045.pdf>.

<sup>18</sup> Sec 2 (33) of The Act, "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more; also available at <http://lawmin.nic.in/ld/P-ACT/1860/186045.pdf>

<sup>19</sup> Sec2(13) of The Act which reads as-"child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence; For the purpose of this paper referred to as juvenile delinquents, here after.

<sup>20</sup> Chapter 4 of Juvenile Justice (Care and Protection of Children) Act, 2015

In effect, The Act gives greater consideration to the youth and vulnerability of a child, and this paper would examine if such a consideration is not farfetched, given the recent spate of crimes committed by juvenile delinquents without due regard to humanity or the laws. The Act also prescribes the deletion of all records pertaining to the Juvenile delinquent even in cases of serious offenses and heinous offenses which may not be beneficial to the society in the long run. In this instance this paper would discuss whether retaining the DNA profiles of Juvenile delinquents should be made mandatory, especially when all other records are being obliterated and the Juvenile is allowed to start life afresh; since allowing a Juvenile delinquent a fresh start should not be and cannot be at the cost of sacrificing the safety of the public in general whose everyday lives had been disrupted by the activities of such juveniles in the past.

#### IV. RIGHTS OF JUVENILES VS RIGHTS OF JUVENILE DELINQUENTS

The Act prescribes that the rights of the Juveniles are to be taken into consideration before meting out custodial treatment to them. Given the fact that there is no other legislation excepting the Commission for Protection of Child Rights Act '2005, which provides for protection of children's rights and measures to be taken in the event of violation of children's rights, The Juvenile Justice (Care and Protection of Children) Act, 2015, gives supplementary provisions for following child friendly procedures while dealing with children even if they are juvenile delinquents. According to Sec.8 (3) (a) of the Act, the informed participation of the child is to be ensured. This is in order to ensure that the children have a fairly good idea of the reasons for their apprehension and their rights which they have to be aware of so that their rights are not violated. It is an established principle of evidence that the evidence of a child is acceptable unless the child is incapable of understanding or comprehending the questions put to him/her, or has been tutored by its custodians/guardians. And even then it is not possible to accept such evidence without corroboration<sup>21</sup> or without prudently examining the demeanor of the child<sup>22</sup>. These exercises are undertaken by the courts by way of caution in order to satisfy themselves of the competency of the child as a witness and with the presumption that a child is basically guileless<sup>23</sup>. Therefore, whenever a child in conflict with law is presented before the courts the courts have to determine the extent to which the child is guileless and how much mental ability the child has used in order to plan as well as execute an offense. Though the Act provides for the Coram who can undertake this exercise it does not specify the procedure in which to find out the guilelessness of the child, despite this procedure being considered an assessment of the mental capacity of the child and also since it does not come under the purview of trial under the Act.

And then again juvenile delinquents are not to be placed in regular lockups or jails. This is so, such that they do not become real criminals after being associated with hardened criminals because of their impressionable minds. But then, if it is their association with criminals that makes them inclined to commit crimes then why is it they commit crimes before being apprehended when their associations are with ordinary people without criminal intentions generally. In what manner, their associations with criminals contribute to their becoming professional criminals is an issue worth researching into. An illustrative case in this context is the hit and run case of a juvenile who turned 18 only four days after he committed the act<sup>24</sup>. The juvenile had committed not one but two offenses namely that of being a minor and driving a vehicle and causing the death of another person by driving rashly at high speed. Here he informed juvenile had the audacity to challenge the Juvenile Board's verdict of trying him as an adult before the Session's Court in Delhi<sup>25</sup>. It would be worthwhile to deliberate on the fact that 4 days after the juvenile committed the Act he became 18 years old and even if he had been arrested the very next day he could not have been presumed to be innocent. This is because the Juvenile had already caused an accident once before and he had become aware of the fact that his parent had also been apprehended for abetting him. So here is a case where the basic premise of innocence on behalf of a juvenile had been annihilated and therefore the Juvenile should have been considered a "repeat offender" and not given the benefit of the presumption of innocence. A fresh start by deleting the past records may not be permissible to such a juvenile either. Because a fresh start is granted to a delinquent who has committed a mistake out of innocence and ignorance and not out of innocence alone. It is for cases such as this that a DNA database is recommended, wherein the DNA fingerprints of repeat offenders shall be held albeit confidentially if so required. It is not only for heinous offenses but offenses which are repeated by the same juvenile due to negligence which results in endangering human lives, that the DNA database is sought.

#### V. DNA DATABANK OF JUVENILES - WHY NEEDED?

The Juvenile Justice (Care & Protection of Children) Act, 2015 does not provide for the creation of a database containing the DNA profiles of Juvenile delinquents under any category. It recommends the deletion of all past records of the juvenile but permits their retention under special circumstances<sup>26</sup>. Neither does The Act specify these special circumstances nor does the Act mention anywhere the 'age' of the juvenile/child whose records can be retained. This is because if the reform and rehabilitation of a child is the ultimate aim of The Act, then younger children may have an advantage over older children due to having a greater time period for allocating to reform or rehabilitation until they turn 18!. The Act provides for assessing the

<sup>21</sup> CRA No.1637/2013, Deepak Rai vs. State (GNCT of Delhi), Para 8 onwards

<sup>22</sup> CRA No.668/2006, Rameshvar & Ors. vs. State of Chhattisgarh, Para19

<sup>23</sup> CRA No. 399/2007, State of Himachal Pradesh vs. Balkrishan, Para 25

<sup>24</sup> [www.firstpost.com/india/juvenile-in-delhi-hit-and-run-case-shouldnt-get-away-on-a-technicality-victims-father-2723028](http://www.firstpost.com/india/juvenile-in-delhi-hit-and-run-case-shouldnt-get-away-on-a-technicality-victims-father-2723028)

<sup>25</sup> <http://www.firstpost.com/india/delhi-hit-and-run-minor-challenges-juvenile-boards-decision-to-try-him-as-an-adult-2825478.html>

<sup>26</sup> Sec 3(xiv) *Principle of fresh start*: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

capacity of a juvenile to commit a heinous offence if the Juvenile is under 16 years of age or between the ages of 16 & 18, but does not make it compulsory to obtain collect and store its DNA for identification purposes which is a relatively more discreet and reliable method of future identification and which is not the same as keeping the records of the juvenile delinquent. This is because the presence of the records of the juvenile delinquent may reveal his/her past acts but the DNA profile placed under a classified head will only reveal that the juvenile had been apprehended once before and that will be sufficient tip-off to the law enforcement who will be alerted timely to safeguard the interests of the public in general or maybe even the juvenile delinquent itself in case he/she is under some disability on account of such past criminal conduct.

The Act speaks of a 'child in need of care and protection'<sup>27</sup> with regard to children who are homeless, abandoned, surrendered or found children who are missing from their homes and the like. Curiously the Act does not recommend storing the DNA profiles of such children in a database even if it was a localized database limited to the territory from within which such children were secured by the agencies of the State. Such a database will give them a sense of belonging, identity, and citizenship even if they do not make it to any foster home or are not adopted. In the event of any calamity or unforeseen unfortunate event, the identity of these children can be ascertained from such a database and they can be traced with the help of their DNA profiles so stored.

The Act is silent about treatment to be meted out to juveniles who attempt suicide or commit suicide. Though a suicide harms the doer more, in effect that it is a murder of oneself; the consequences of suicide are multifarious both upon the doer (which is a loss of life) as well as the survivors of the deceased.<sup>28</sup> Suicide is considered a heinous crime but cannot be dealt with in the manner as heinous crimes are to be dealt with on account of the recent emergence of cyber games like the "Blue whale Challenge"<sup>29</sup>. Children associated with such games should have their DNA profiles stored in DNA databases so that such databases may be made available for further research (of course, with the informed consent of such juveniles and their guardians), into the psychological and behavioral patterns of the human child under the influence of cyber games. Possibly the Blue whale challenge could be termed as a cybercrime in the coming years.

Then there are children who threaten authorities with dire consequences upon being apprehended.<sup>30</sup> A case in illustration is of a Magistrate being threatened with dire consequences by a juvenile prisoner for having rejected his bail plea. In as much the position of such Magistrate is reiterated by the immediate superior of the Magistrate (the District Judge, in this instance), in having received a threat of death from another juvenile, the situation demands attention to the circumstances under which the authorities under the Act are forced to discharge their duties. Until and unless the authorities are provided with a basic level of protection against such juveniles it would be difficult for them to think of the welfare of juveniles. The situation gets even worse in case the juvenile delinquent is absconding or flees the correctional facility. Since, in such a case, he would have the liberty, will and perhaps the resources to carry out the threat successfully. Now, in this instance supposing the juvenile gives effect to his threat with the help of adults, should the adults be tried for instigating and abetting him whereas the juvenile is tried for the more heinous crime of murder? The Act is also silent about children who may be endowed with criminal tendencies which they might have exhibited while residing in the correctional facilities and who might instigate other juveniles into committing crimes or abetting the commission of crimes. Storing the DNA profiles of such juvenile delinquents can serve as a measure of safeguarding the interests of other juveniles in the facilities, can be used for cross-reference by the law enforcement agencies as well be a mine of research material for those interested in juvenile crimes. This is because it is only the past records which can reveal the mental and psychological status of juvenile crime doers who may or may not be amenable to rehabilitation or correction despite repeated efforts and whose criminal tendencies may resurface at a different point of time. The availability of their DNA profile in a classified database will reduce the time taken for investigation or inquiry as well as provide direction to it in case the law enforcement comes to know that the juvenile had had an opportunity to reform during his reformatory years.

For juveniles exhibiting psychiatric problems, there should be a DNA profile database. Of all the crimes committed the ones committed during mental instability will provide a juvenile with double protection, one of insanity and the other of being a Juvenile. But the aspect to be noted here is the ability to re-integrate into society and the morale of and age of the victim. This is not a simple task, since, the society cannot be expected to accept a mentally unstable person with criminal tendencies into their midst despite such a person being a juvenile. This is so because the juvenile will cease to be a juvenile and when he/she reaches adulthood the criminal tendencies may persist and the person may become a threat to the public during his periods of mental imbalance. In such situations, the DNA profile of the juvenile can give direction to the investigative authorities even if it is only to exonerate the currently normal person that the juvenile troubled with mental problems has become.

## VI. CONCLUSION

Age-related issues are often the source of contention when a juvenile is being tried. Though the Juvenile Justice, Act provides for the procedure to be followed for evaluating the age of an offender, it also allows a margin of 1 year as a concession for those offenders whose age cannot be determined correctly. Whereas this provides an increased time period for an offender to be treated as a minor, it also affects the society and the morale of the victims seeking justice, adversely. This is so, because; this type of concession allows the juvenile additional time to be free from the consequences of his/her misdeeds. The victims of the crimes are the most affected since neither can they hope for retribution nor can they repose their faith in the justice

<sup>27</sup> Sec.2(14) of The Act.

<sup>28</sup> <http://www.pacificgrovehospital.com/disorders/suicidal-ideation/symptoms-signs-effects>

<sup>29</sup> [https://en.wikipedia.org/wiki/Blue\\_Whale\\_\(game\)](https://en.wikipedia.org/wiki/Blue_Whale_(game)); <http://indianexpress.com/article/what-is/what-is-the-blue-whale-challenge/>

<sup>30</sup> <https://timesofindia.indiatimes.com/city/patna/juvenile-threatens-magistrate/articleshow/59115037.cms>

delivery system, nor can they believe that the offender has indeed reformed. This is especially so in case the juveniles belong to the borderline cases. The children incarcerated during their formative years i.e. between 12-17 years of age may undergo reform, but what about the juveniles who are between 17-18 years of age? Are they sufficiently 'reformed', so that they can be released into the free world with the belief that they would live life normally without taking recourse to crime? A juvenile is significantly different from an adult to merit specialized treatment. She/he is also relatively unequipped to deal with the vagaries of life despite the fact that many juveniles are people who have been running their lives in their own manner like adults without interference from adults. Thus, when these juveniles become offenders' confinement or detention is not welcome to their self-sustaining manner of living, looking at their being in their reformatory years, if they are put into correctional facilities which are also places where they can learn to become responsible adults there is every chance they may seek to rebel rather than use the facilities to become responsible adults.<sup>31</sup>

It is not legal to retain the records of a juvenile delinquent but a DNA databank can be created to store the DNA profiles of the Juvenile delinquents under classified heads so as to enable the authorities and the law enforcement to identify any repeat offender or in order to sketch a pattern of offence by any juvenile in subsequent crimes or in order to identify criminal behaviors using the genetic information within the database. If such a database is created under the aegis of any statutory body with clearly defined purposes and under any law specifically made for this purpose adhering to the principles of privacy of the juvenile and the confidentiality of the information within the database then and only then ,shall, such a database, be legal.



<sup>31</sup> Taken from self authored article published under the pseudonym of orcinusin in indianjournals.com