

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, জানুয়ারি ২৬, ২০১৭

Government of the People's Republic of Bangladesh

Ministry of Women and Children Affairs

NOTIFICATION

Dated the 24th January, 2017

S.R.O.No. 22-Law/2017.—In exercise of the powers conferred by section 41 of the Deoxyribonucleic Acid (DNA) Act, 2014, the Government is pleased to publish the following English translation of the Act to be called the Authentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section (2) of section 1 of the Act:—

The Deoxyribonucleic Acid (DNA) Act, 2014

[ACT NO. X OF 2014]

An Act to make provisions for determination of the process and methods of DNA sample collection and its analysis, control of using DNA sample and profile, establishment of forensic DNA laboratories and a national DNA database and for the matters ancillary thereto.

WHEREAS it is expedient and necessary to make provisions for determination of the process and methods of DNA sample collection and

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its analysis, control of using DNA sample and profile, establishment of forensic DNA laboratories and a national DNA database and for the matters ancillary thereto;

THEREFORE it is hereby enacted as follows:—

Chapter-I **Preliminary**

1. Short title and commencement.—(1) This Act may be called the Deoxyribonucleic Acid (DNA) Act, 2014.

(2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context—

(1) “crime scene” means—

(a) the place where an offence is committed; or

(b) anything found from the body of the victim or the suspect or the accused or any other thing carried by such person; or

(c) anything found from any place associated with the commission of the offence;

(2) “Department” means the Department formed under section 20;

(3) “Advisory Board” means the Forensic DNA Laboratory Advisory Board formed under section 16;

(4) “Technical Committee” means the Forensic DNA Laboratory Technical Committee formed under section 19;

- (5) “DNA” means Deoxyribonucleic Acid;
- (6) “DNA sample” means any kind of biological sample collected from the following sources for the purpose of DNA analysis in the manner prescribed in Chapter-II, namely:—
 - (a) bodily substance;
 - (b) tissue sample;
 - (c) bodily substance collected from wearing cloth;
 - (d) bodily substance collected from the spot; and
 - (e) such other sources as may be prescribed by rules;
- (7) “DNA profile” means the result of DNA analysis which is a combination of genotypes obtained from at least 10 genetic markers along with the DNA molecule and expressed as alpha-numeric format;
- (8) “DNA laboratory” means any forensic DNA laboratory established by the Government under section 14;
- (9) “designated person” means any forensic expert having adequate knowledge and training on collecting DNA samples, or any doctor, police officer or any other person designated by the Government for medico-legal test;
- (10) “police officer”, for the purpose of this Act, means any police officer not below the rank of sub-inspector;
- (11) “Criminal Procedure” means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (12) “rules” means rules made under this Act;
- (13) “person” includes any individual, company, association, partnership business, statutory body or also their representatives;

(14) “qualified person” means any person who works in a DNA laboratory and has a minimum Bachelor Degree in Biochemistry or Molecular Biology or Biotechnology from any university recognized by the Government.

3. Act to override other laws.—(1) Notwithstanding anything contained in any other law for the time being in force, or in any other document having legal status, the provisions of this Act shall prevail.

(2) Notwithstanding anything contained in sub-section (1), nothing of this Act shall be deemed to have prejudiced the provision of section 112 of the Evidence Act, 1872.

Chapter- II

Collection, Analysis, etc. of DNA Samples

4. Request to provide DNA sample.—(1) Any police officer may, for the sake of investigation of an offence, request the victim, the suspect or the accused or any other person involved in commission of the offence to provide DNA sample.

(2) If the victim, the suspected person or the accused referred to in sub-section (1) is a minor or of unsound mind or physically handicapped, the concerned police officer may request the parents or the legal guardian of the minor or the person of unsound mind or physically handicapped or the lawyer engaged on behalf of him to give consent to collect DNA sample from the minor or the person of unsound mind or physically handicapped.

(3) In all cases except the cases laid down in sub-sections (1) and (2), request may be made according to the manner prescribed by rules.

5. Place of collecting DNA sample.—DNA sample may be collected from any crime scene or any other place where DNA sample may be found.

6. Written consent.—(1) For the sake of investigation of an offence, no DNA sample shall be collected from any person under this Act, without taking his written consent in such form and manner as may be prescribed by rules and the presence of minimum two witnesses.

(2) If the person referred to in sub-section (1) is a minor or of unsound mind or physically handicapped, the consent given on behalf of the minor or the person of unsound mind or physically handicapped by his parents or legal guardian or the lawyer engaged by him, shall be treated as the consent of the minor or the person of unsound mind or physically handicapped.

7. Refusal, etc.—(1) For the sake of investigation of an offence, if any person is requested under section 4 and no consent is given within 3 (three) hours of such request, it shall be treated as his refusal of giving DNA sample.

(2) If any person expresses his refusal under sub-section (1), such refusal shall be noted properly in such form and manner as may be prescribed by rules.

8. Collection of DNA sample under court order.—(1) If any person refuses to provide DNA sample under section 7, the concerned police officer, for the sake of investigation of an offence, may apply to the appropriate court for collection of DNA sample.

(2) On the basis of the application made under sub-section (1), the court may, after giving both the parties an opportunity of being heard and considering the documents laid before it, pass an order for the collection of DNA sample.

(3) When DNA sample is collected by order of the court under sub-section (2), it shall, for the purposes of section 6, be deemed to have been collected with the consent of the person.

9. Collection of DNA sample from a minor or a handicapped person.—When the permission of the court is sought under section 8 to collect DNA sample from such a person who is a minor or of unsound mind or physically handicapped, the court may pass an order to collect DNA sample in presence of his parents or legal guardian or the lawyer engaged by him.

10. Procedure for collection of DNA sample.—DNA sample shall have to be collected by a qualified person or by the person specified in this behalf in presence of minimum two witnesses according to such manner and procedure as may be prescribed by rules.

11. DNA sample analysis.—(1) The DNA sample collected under section 10 shall be analyzed by a qualified person, who shall prepare a report containing the DNA profile resulted from analysis and put his signature on it.

(2) The report prepared under sub-section (1) shall, *inter alia*, contain the following, namely:—

- (a) a forwarding note signed by the head of the DNA laboratory;
- (b) a short description of the process followed in DNA sample analysis;
- (c) the method under which DNA sample analysis was conducted; and
- (d) such other matters as may be prescribed by rules.

12. Use of DNA sample and DNA profile.—DNA sample and DNA profile shall not be used in any purpose other than the following, namely:—

- (a) identification of any person;
- (b) identification of any person related to an offence;
- (c) identification of any missing or unknown person;

- (d) determining relationship between two or more persons;
- (e) identification of deceased person caused due to natural calamity or accident;
- (f) conflict resolution; and
- (g) such other matters as may be prescribed by rules.

13. Preservation of DNA sample and DNA profiles.—DNA samples shall be preserved by DNA laboratory and DNA profiles shall be preserved in the National DNA Database established under section 24, in such manner and for such period as may be prescribed by rules.

Chapter-III **Establishment of DNA Laboratory, etc.**

14. Establishment of DNA laboratory.—(1) For the purposes of this Act, the Government may, by notification in the official Gazette, may establish one or more DNA laboratories.

(2) In case of establishing DNA laboratory under sub-section (1), the Government may, if necessary, take advice from the Advisory Council.

(3) The National Forensic DNA Profiling Laboratory situated in Dhaka, shall be deemed to have been established under this Act by the Government.

15. Quality assurance of DNA analysis.—(1) Every DNA laboratory shall ensure highest quality of DNA analysis in such manner as may be prescribed by rules.

(2) In case of ensuring highest quality under sub-section (1), every DNA laboratory shall, *inter alia*,—

- (a) conduct its activities by highly qualified and trained personnel;
- (b) ensure the highest quality of the DNA analysis;

- (c) ensure the physical infrastructural facilities;
- (d) follow appropriate methods for DNA analysis;
- (e) follow appropriate procedure to maintain safety and confidentiality of the information preserved by it;
- (f) follow the procedure prescribed by this Act and rules for DNA analysis conducted thereunder; and
- (g) use appropriate technology to ensure highest technical standard of the DNA analysis.

Chapter-IV

Advisory Council, Technical Committee, etc.

16. Advisory Council.—(1) The Government shall, by notification in the official Gazette, constitute a Forensic DNA Laboratory Advisory Council to give it advice for proper implementation of this Act.

(2) The Advisory Council shall consist of the following members, namely:—

- (a) the Minister in charge of the Ministry of Women and Children Affairs, who shall also be its Chairman;
- (b) the Secretary of the Ministry of Women and Children Affairs, ex-officio, who shall also be its Vice-Chairman;
- (c) an officer not below the rank of Joint Secretary of the Ministry of Women and Children Affairs;
- (d) an officer not below the rank of Joint Secretary of the Ministry of Health and Family Welfare;
- (e) an officer not below the rank of Joint Secretary of the Ministry of Home Affairs;
- (f) an officer not below the rank of Joint Secretary of the Legislative and Parliamentary Affairs Division;

- (g) a Director General of the Prime Minister's Office;
- (h) a police officer of the rank of a Deputy Inspector General;
- (i) a Deputy Attorney General nominated by the Attorney General;
- (j) a Special Public Prosecutor engaged in Women and Children Repression Prevention Tribunal nominated by the Law and Justice Division;
- (k) the Chairman of the Biochemistry and Molecular Biology Department of the Dhaka University;
- (l) the Chairman of the Genetic Engineering and Biotechnology Department of the Dhaka University;
- (m) the Head of the Forensic Medicine Department of the Dhaka Medical College;
- (n) the Director General of the National Institute of Biotechnology;
- (o) the Director of the National Forensic DNA Profiling Laboratory; and
- (p) three prominent citizens having vast knowledge in the relevant issue nominated by the Government.

(3) The members nominated under clause (p) of sub-section (2) shall hold office as a member for such period as may be determined by the Government.

(4) The Department or, until the Department is established, the DNA Laboratory Management Cell formed under the provision of section 23, shall provide the secretarial assistance to the Advisory Council in discharging functions.

17. **Functions of the Council.**—The Council shall discharge the following functions, namely:—

- (a) to give advice to the Government on the establishment of DNA laboratories, their size, location and other related issues;
- (b) to give advice to the Government on the establishment and management of the national DNA database;
- (c) to give advice on the purity, accuracy, confidentiality of the DNA profiles;
- (d) to make necessary recommendations to the Government on the necessity of financial allotment for development or expansion of DNA laboratories;
- (e) to approve work-plans of DNA laboratories; and
- (f) such other matters as may be prescribed by rules.

18. **Meeting of the Advisory Council.**—(1) The meeting of the Advisory Council shall be held at least once in a year, at such place, date and time as may be determined by the Chairman thereof.

(2) The Chairman of the Advisory Council shall preside over all the meetings of the Advisory Council and, in his absence, the Vice-Chairman shall preside over the meeting.

(3) The Advisory Council may, if necessary, invite any person concerned to attend at its meeting.

(4) The Advisory Council may, subject to the provisions of this section, determine the procedure of its meetings.

19. **Technical Committee.**—(1) For ensuring the technical standard of the DNA laboratories and regulating the technical functions and responsibilities of those laboratories, the Government shall constitute a Forensic DNA Laboratory Technical Committee.

(2) Without prejudice to the generality of sub-section (1), the Committee shall, *inter alia*, discharge the following functions, namely:—

- (a) to give advice to all concerned on latest research on DNA matters, time management of DNA sample analysis and other relevant issues;
- (b) to give advice to the Government on preservation of ingredients of DNA sample analysis and destruction of the unnecessary ingredients;
- (c) to give directives to the concerned DNA laboratories to ensure DNA analysis in proper method;
- (d) such other matters as may determined by rules.

(3) The Technical Committee shall conduct its activities on the basis of the opinion of the majority of the members.

(4) The formation, responsibilities and other ancillary matters of the Technical Committee shall be prescribed by rules.

20. Establishment of Department, etc.—(1) For the purposes of this Act, the Government shall establish a Department to be called the “DNA Laboratory Management Department”.

- (2) The head office of the Department shall be in Dhaka.
- (3) The Department shall coordinate, supervise and monitor the activities related to the establishment of DNA laboratories and a national DNA database under this Act and other activities ancillary thereto and discharge such other functions as may be prescribed by rules.

21. Director General.—(1) There shall be a Director General of the Department.

- (2) The Director General shall be appointed by the Government and the terms and conditions of his service shall be determined by the Government.

(3) When the office of the Director General is vacant or the Director General is unable to perform his functions on account of absence, illness or any other cause, any person nominated by the Government shall perform the duties of the Director General temporarily until the newly appointed Director General takes charge of the vacant office or the Director General resumes the functions of his office.

(4) For the purposes of this Act, the power and functions of the Director General shall be prescribed by rules.

22. Appointment of officers and staff.—For efficient performance of the functions of the Department, necessary officers and staffs may be appointed in such manner and under such condition as may be prescribed by rules.

23. Establishment of Cell, etc.—(1) Until the Department is established, for the purpose of proper implementation of this Act, there shall be a cell to be called the “DNA Laboratory Management Cell” under the Ministry of Women and Children Affairs.

(2) The formation, power and functions of the cell shall be prescribed by rules.

Chapter-V

National DNA Database

24. Establishment of National DNA Database.—(1) The Government shall establish a National DNA Database comprising the following indices containing therein the DNA profiles made by a DNA laboratory:

- (a) crime scene index;
- (b) convicted offenders’ index;
- (c) missing persons’ index; and
- (d) such other index as may be determined by the Government, from time to time.

(2) The indices laid down in sub-section (1) shall contain the DNA profiles resulted from DNA analysis and other information related to DNA.

25. Securing the National DNA Database.—The DNA profiles shall be secured in the National DNA Database in such manner as may be prescribed by rules.

26. Restricted access to the National DNA Database.—For the purposes of this Act, access to the National DNA Database shall be restricted for all, other than the persons specified by rules.

27. Cooperation with international law enforcing agencies.—For the purposes of this Act, in respect of DNA issue, it would be allowed to make necessary cooperation, coordination and exchange of information related thereto with the international law enforcing agencies or the law enforcing agencies of any other country, and for the said purpose, if necessary, to join with any internationally recognized institution and network.

Chapter-VI

Offences and Penalties

28. Penalty for conducting unauthorized forensic DNA activities.—If any person, without any lawful authority, conducts forensic DNA activities, such act of the person shall be an offence, and he shall, for such offence, be punished with imprisonment for a term not exceeding 5 (five) years, but not less than 3 (three) years, or with fine not exceeding Taka 3 (three) lac, or with both.

29. Penalty for unauthorized collection or disclosure or use of DNA information.—If any person, by violating any provision of this Act or rules, willingly or intentionally,-

- (a) discloses any DNA information to any person; or
- (b) collects any DNA information; or
- (c) transfers or discloses DNA sample or DNA profile to any other person,

such act of the person shall be an offence, and he shall, for such offence, be punished with imprisonment for a term not exceeding 3 (three) years but not less than 2 (two) years, or with fine not exceeding Taka 50 (fifty) thousand, or with both.

30. Destruction, alteration, contamination, etc. of DNA sample.—

If any person, with ill motive, destroys, alters, contaminates or counterfeits any DNA sample, such act of the person shall be an offence, and he shall, for such offence, be punished with imprisonment for a term not exceeding 10 (ten) years, but not less than 3 (three) years, or with fine not exceeding Taka 5 (five) lac, or with both.

31. Penalty for unauthorized access to the National DNA Database.—

If any person, without any lawful authority, accesses to the National DNA Database, such act of the person shall be an offence, and he shall, for such offence, be punished with imprisonment for a term not exceeding 2 (two) years, but not less than 1 (one) year, or with fine not exceeding Taka 30 (thirty) thousand, or with both.

32. Offences by company.—(1) Where an offence under this Act is committed by a company, then every director, manager, secretary, partner, officer and employee of the company who has direct involvement with the offence shall be deemed to have committed the offence unless he proves that the offence has been committed without his knowledge or he exercised all due diligence to prevent the offence.

(2) If the company mentioned in sub-section (1) is a body corporate, it may be accused or convicted separately, in addition to accuse or convict the persons mentioned above; but in criminal cases, only fine may be imposed upon the company.

Explanation.—In this section—

- (a) “company” includes any firm, partnership business, society, association or organization; and
- (b) “director”, in case of firm, means any partner or member of the Board of Directors.

33. Application of the Code of Criminal Procedure.—In case of lodging any complaint, conducting inquiry, trial and disposal of appeal of any offence committed under this Act, the provisions of the Code of Criminal Procedure shall be applicable.

34. Trial of offence.—The offences under section 30 shall be tried by a Court of Session, and offences under sections 28, 29 and 31 shall be tried by a Magistrate of the first class or by a Metropolitan Magistrate.

35. Special provision regarding fine.—Notwithstanding anything contained contrary in the Code of Criminal Procedure, a Magistrate of the first class or a Metropolitan Magistrate shall be competent to impose fine under sections 28, 29 and 31.

36. Negligence in sample collection.—In case of collection of DNA sample in accordance with the provisions of this Act or rules, if it is impossible to collect DNA sample, or the DNA sample is destroyed due to negligence of a qualified person or designated person, the concerned controlling authority may take disciplinary or other appropriate legal action against him considering his such act as his inefficiency or misconduct, as the case may be.

37. Evidential value of a DNA profile.—A report containing DNA profile may be treated as an admissible evidence in the proceeding of a court.

38. Exemption to appear before court as witness.—In course of any court proceeding, if any DNA profile report is prepared under this Act by any officer of a DNA Laboratory or by a qualified person, his opinion incorporated in the report may be treated as admissible evidence of the incident without appearing him before the court.

Chapter-VII

Miscellaneous

39. Power to make rules.—For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

40. Removal of difficulties.—If any difficulty arises in giving effect to any provision of this Act, the Government may, by order, publishing in the official Gazette, keeping consistency with other provisions of this Act, issue directions to be followed in this regard with clarification or explanation of such provision.

41. Publication of Authentic English text.—(1) After the commencement of this Act, the Government may, by notification in the official Gazette, publish an English text of this Act which may be called the authentic English text of this Act.

(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

By order of the President

রোকেয়া খাতুন
সিনিয়র সহকারী সচিব।

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