

## BOOK REVIEW

DNA TECHNOLOGY IN ADMINISTRATION OF JUSTICE By Dr. Jyotirmoy Adhikary. Lexis Nexis (Butterworths). New Delhi: 2007. Pages xxi – 684. Rs. 1495.

The book under review presents an excellent exposition of the new science relating to DNA Technology in the administration of justice. This book is divided into six chapters.

Chapter 1 deals with the Introduction and Methodology. In this chapter, the author discusses the development of genetic science and its impact on justice system. He asserts that in any discussion on ethical, legal or social implications of such new genetic developments, a basic scientific background is an essential prerequisite. He further stresses that DNA evidences may also form the basis of an appeal against convictions where people may have been wrongly convicted on the basis of mistaken eye witness identification, by way of exculpatory DNA evidence. There is no denying the fact that in our adversarial system of justice, such erroneous convictions are highly probable as are possible miscarriages of justice owing to human error. Therefore, if DNA evidence is adopted in the Indian legal system, then the detection of a culprit would be much easier.

Chapter 2 deals with the scientific explanation of DNA, DNA Fingerprints and its methodologies for legal application. The author, in this chapter, defines the term “DNA”. He says that every cell contains a component called nucleus and within it, lies a genetic material known as DNA (deoxyribonucleic acid). Since DNA carries the genetic code, it can determine human character, behaviour and body characteristics. Every individual has a unique DNA pattern distinct from the others. He receives half of such DNA from his biological mother and the other half from his biological father. He further points out that a piece of chromosome that dictates a particular trait is called a gene and genes are made of chemical molecules called DNA. The author goes on to mention the different methods of DNA tests such as RFLR, PCR, STR etc. He explains that as DNA differs from person to person, so do fingerprints which are thought to be unique. As a result, most of the civilized countries of the world have been using such a technique to identify criminals and perpetrators of crimes without any impediment. Hence, its application in criminal justice system is widespread.

Chapter 3 deals with the Development of DNA Fingerprinting as the latest tool of forensic science: International Perspective. In this chapter, the author has made a survey of the countries where DNA technique has attracted the increasing attention of lawmakers and judiciary in detecting actual offenders. He painstakingly points out the law and the application of DNA technology in countries such as the USA, the UK, Greece, Spain, Portugal, Austria, Switzerland, Finland, Sweden, Netherlands, Denmark and Norway to name a few.

It is pertinent to mention that the adoption of DNA technology in the criminal justice system has encountered resistance from the public on the ground of violation of basic human rights under Articles 20(3) and 21 of the Indian Constitution. However, since the advantages of the techniques outweigh the disadvantages, many countries, as pointed out by the author, have either adjusted or amended their existing laws, or have enacted specific legislations to strike a balance between the two conflicting opinions. Despite such adverse situations that exist in some countries, DNA technology has come to be accepted and admitted by both the legislature and the judiciary in the interest of justice and social security. The successful adoption of the new technology has encouraged many other countries to adopt and apply the technology to identify conclusively the actual perpetrators of the crimes and the criminals. It is needless to say that justice to the aggrieved will remain a pious wish if the offenders are permitted to go scot-free.

Chapter 4 deals with the comparative study of Growth of DNA Testing and DNA Data bank in the legal systems of developed countries. In this chapter, the author makes an endeavour to analyse the need for developing a DNA Databank. He adds that a concept of Universal DNA Databanks is in the offing, which might face the challenge of human rights law also. He further mentions that most countries have already enacted legislations to establish and control DNA Databanks and few other countries are also in the process of enacting such legislations. It is, however, expected that the remaining countries would follow the path already shown by the developed world.

Chapter 5 deals with the response of the Indian legal system in adopting scientific DNA evidence in the administration of justice. This chapter highlights and explores the reasons for the reluctance on the part of the legislature and the judiciary to accept and adopt DNA technology in the criminal justice system. The author begins this chapter by saying that DNA technology has very little application in the Indian legal system since the accusatorial system places the entire burden of proof on the investigating agency. This pressure compels the investigators to resort not only to all kinds of illegalities (i.e. coercing, planting evidence, etc) but also to third degree methods to build a foolproof case. In support of his contention, he comments that conflicting judicial approaches regarding admissibility of DNA evidence have created confusion and uncertainty. The apex court has, in almost all decisions, admitted the scientific accuracy and conclusiveness of DNA testing. In some cases however, the apex court has expressed a great deal of reluctance in allowing DNA tests or in admitting DNA evidence on the grounds of legal or constitutional prohibition, or sometimes even for the sake of public policy.

The author has extensively cited relevant judicial decisions in order to prove his aforesaid contention. He has referred to cases like *Gautam Kundu v the State of West Bengal*,<sup>1</sup> where the Supreme Court held that the Court cannot

---

<sup>1</sup> (1993) 3 SCC 418

compel the father to submit himself to DNA test in order to determine the paternity. The same sentiment was echoed in *Syed Mohd. Ghouse v Noorunnisa Begum*.<sup>2</sup> This case had also laid down some guidelines which are:

1. Courts cannot order blood test as a matter of course.
2. No one can be compelled to give sample blood for analysis.

The above decisions have, no doubt, had an adverse effect on the investigation of offences of rape, murder, paternity and maternity disputes because of the fact that without resorting to DNA technology, these offences could not be ascertained reliably and conclusively. It is interesting and baffling to understand that how, in the case *Kanti Devi v. Poshi Ram*,<sup>3</sup> the Supreme Court held that although DNA evidence is scientifically accurate, it cannot be accepted in determining the paternity dispute on the ground of public policy. It is rightly opined that in effect, the Supreme Court, by this decision, encouraged the law makers to strictly adhere to the conventional, unscientific, ineffective and biased system of justice.

I am, however, inclined to agree with the opinion expressed by the author. It would surely be an unfortunate state of affairs if we deliberately fail to use new technology in this age of rarified technological progress in solving or determining, with accuracy and free from error, paternity-maternity disputes, rape, murder or other serious criminal cases with the help of DNA technology. The offences committed by individuals cannot be condoned merely on the ground of public policy. On the contrary, it would clearly be an anti-people policy if the offenders are not apprehended and punished. In effect, the society would turn into a haven for offenders for the want of evidence.

However, in *Sharda v Dharmpal*,<sup>4</sup> the Supreme Court took a positive view regarding the importance and admissibility of DNA evidence in matrimonial cases. The Court observed that a matrimonial court has the power to order a person to undergo medical tests. But if he declines, the Court will be entitled to draw an adverse inference against him. In yet another case, *Banarsi Dass v Teeku Dutta & Another*,<sup>5</sup> the Supreme Court held that a DNA test is not to be directed as a matter of routine and it is only in deserving cases, that such a direction can be given. It is respectfully submitted that the Supreme Court should have spelt out the guidelines to identify such deserving cases. Be that as it may, it is heartening to know that the Supreme Court has approved and permitted medical tests in matrimonial cases. Yet, the Supreme Court has still declined to answer whether this test can be applied in criminal cases. Even then, notwithstanding the above decisions, the author has cited some criminal cases where the Supreme Court has

---

<sup>2</sup> 20001 Cri. L.J. 2028

<sup>3</sup> AIR 2001 SC 2226

<sup>4</sup> AIR 2003 SC 3450

<sup>5</sup> (2005) 4 SCC 449

applied DNA technology to decide these cases viz. the Premanand Swami case, Rajib Gandhi Case, the Tandoor case etc.

Dr. Adhikary has concluded by saying that in order to minimize the legal and ethical problems, and also for the purpose of effective implementation of DNA technology in the administration of justice, we have to introduce a specific DNA legislation in our country. However, while introducing a scientific legislation for application of DNA technology in our legal system, we have to keep in mind certain guiding principles culled from the experience of several other countries where DNA legislations have already been introduced. He has also suggested some guidelines which are to be taken into consideration while drafting a piece of legislation on the application of DNA technology.

I cannot but agree with the author. The conflicting decisions of the Supreme Court can only be attributed to the absence of a legislation on this subject. Therefore, a piece of legislation has to be enacted in order to clear the air of uncertainty. I would, further, like to add that no problems, either legal, ethical or moral (i.e. violation of right to privacy, whether blood taking can cause bodily harm, etc.) must be allowed to stand in the way for adopting a system or technique which is scientifically accurate, exact and free from error. In order to tide over such constraints, if any, necessary changes are to be made in the existing enactments for the smooth passage of such legislation. There is no iota of doubt that victims, their kith and kin as well as the general public would wholeheartedly support such a piece of legislation, which would be effective, unbiased and accurate in solving both civil and criminal cases. The time consumed for a decision would be far less if this technology is adopted in the Indian legal system.

I find the book to be immensely interesting, informative, enlightening and a useful mine of information. The language of the book is simple but poignant. As has been mentioned earlier, the author has forcefully and thoroughly discussed the various decisions of the Supreme Court and has respectfully submitted his fair, constructive and decent comments on such decisions. His contribution in this regard, is commendable. Last but not the least, the book will be well received by the judges, teachers, students of law and individuals interested in forensic science. A piece of legislation on the application of DNA technology in both civil and criminal cases, if enacted, would facilitate and help in detecting and solving paternity and maternity disputes and in apprehending and punishing actual perpetrators of crimes like rape, murder, etc. Since, as claimed by the author, the scientific accuracy, exactness and conclusiveness of the application of DNA technology cannot be disputed or denied, his suggestion should be respected and seriously considered.

—Professor Amit Sen\*

---

\* Formerly Dean, Faculty of Law, Calcutta University; formerly Member, West Bengal Human Rights Commission.