

## A CRITICAL ANALYSIS OF THE USE OF DNA TECHNOLOGY IN PATERNITY DISPUTES

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### ABSTRACT

*The 21<sup>st</sup> Century has brought about new advancements in science and technology especially in the field of DNA Technology. These advancements have found their way into paternity disputes in the form of DNA tests for determining paternity. However, while the science might be clear in its objective, the law regarding the validity and utility of DNA testing is not. DNA tests are not new and are more widely being used, due to their accuracy and ease of availability. But, the stance of Indian courts on its use along with the excessive use of Sec. 112 of the Indian Evidence Act has proved to be insufficient in addressing the issue as DNA tests continue to gain momentum. The Indian legal system must cope with the influx of scientific and technological advancements in order to prevent the misuse of DNA tests.*

### KEY WORDS

Paternity, DNA Testing, Paternity Law, DNA Technology, Evidence, the Right to Privacy

### DETERMINATION OF PATERNITY AND RELATED DISPUTES IN INDIA

#### *What does 'Paternity' mean?*

The term 'paternal' originates from a French word, with the same spelling and it literally means "of a father". For example, paternal aunt would mean the father's sister or sister-in-law. The term 'paternity' which we are studying is derived from this very word and its literal definition is "the fact or state of being a father"<sup>1</sup>. The legal definition, although almost the same as the literal definition also includes the "origin or descent from a father"<sup>2</sup>. The term 'paternity law' is of even more significance here, meaning "a body of law underlying the

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<sup>1</sup>PATERNITY | meaning in the Cambridge English Dictionary, , <https://dictionary.cambridge.org/dictionary/english/paternity> (last visited Oct 6, 2020).

<sup>2</sup>Definition of PATERNITY, , <https://www.merriam-webster.com/dictionary/paternity> (last visited Oct 6, 2020).

legal relationship between a father and his biological or adopted children and deals with the rights and obligations of both the father and the child to each other as well as to others”<sup>3</sup>. It is the application and use of this paternity law that will be further analysed in this research.

## *Origins of Paternity Law*

It is important to understand the origins of paternity law, mainly because it originated in England and found its way to its colonies, of which India was one. It was first recognised by the English Parliament when they passed the law that empowered the State to collect money from fathers whose biological children were being raised on public money. Several decades later, unwed mothers got the right to sue the biological fathers of their children for financial support.<sup>4</sup>

The Indian Evidence Act, which was inherited from our British colonisers and the Code of Criminal Procedure, together form the basis of any law that governs paternity in India. While the details of these two legislations will be dealt with later on, it is important to know that these two legislations form the beginning and the end of any law that concerns paternity disputes in India. Although, with the advent of DNA technology, that has been viewed as a reliable method of determining paternity in legal suits, the law has not evolved in the same way.

One of the most infamous case of a paternity dispute was the N.D Tiwari case<sup>5</sup>. In 2007, a paternity suit was filed in the Delhi High Court by Rohit Shekar and in 2008, a new suit was filed owing to technical issues. The petitioner claimed that he was the son of N.D Tiwari, a veteran politician from the Congress Party. In 2009, a single judge bench dismissed the suit owing to technical issues, however, in 2010, a division bench overruled the previous dismissal and allowed the case to proceed. Following this, a series of appeals and pleas were filed by N.D Tiwari with regard to the DNA test that was ordered by the Court. In 2012, he finally gave in and accepted that he was indeed the biological father of the petitioner. This was even before the results of the DNA test could be analysed by the Court. While this case is fairly recent, paternity disputes are not new in the Indian legal system. To understand why

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<sup>3</sup>Richards, Edward P. "The Presumption of Legitimacy". Law and the Physician. The Law, Science & Public Health Law Site (last visited Oct 6 2020).

<sup>4</sup> Katharine K Baker, Bargaining or Biology - The History and Future of Paternity Law and Parental Status, 14 Cornell Journal of Law and Public Policy 71, 71-78 (2004).

<sup>5</sup> *Rohit Shekar v. Narayan Dutt Tiwari and Anr*, (2012) 12 SCC 554.

they occur at such a frequency, it is important to understand the importance of paternity, both legally and socially.

## *Significance of Paternity*

The absence or presence of a father has wide ranging social and legal implications. The social significance of paternity has shaped its legal significance and as most of the laws today still favour only the traditional families, which is confined to two parents, the mother and the father, paternity still finds an important place in legal disputes.<sup>6</sup> This applies to biological as well as social paternity, the latter which is often considered as a substitution to the former. Social paternity is a “situation in which a man other than the biological father is bringing up the child”.<sup>7</sup> The legal maxim *Pater est quem nuptiae demonstrant* which literally means “the father is he whom the nuptials indicate” reflects social paternity. Although most legal disputes arise due to the determination of biological paternity, in the presence of both types of paternity in a case, social paternity is given the preference.<sup>8</sup>

The source of paternity law in India stems from the evolution of the nuclear family as the accepted form of a family. This is purely a product of industrialisation and is predominantly based on the European world view. However, this view has established itself in India and most paternity disputes arise due to this. This view of fatherhood has cultural significance and paternity makes its way into various religious rituals too. Although the system that viewed the father as the head of the family and the sole breadwinner is beginning to become irrelevant in cosmopolitan societies, the role of the father cannot be discredited. Along with various social obligations, various legal obligations also shape the role of the father in a child’s life. Perhaps, they are more important than the cultural and social implications.<sup>9</sup>

In a patriarchal society like ours, where men and women still have to adhere to certain stereotypes, the main role of the father is in providing child support. This would include food, water, housing, education, healthcare and the mother is expected to meet the emotional needs of the child. This is idea that is recognised in our legal system. One cannot dismiss the fact

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<sup>6</sup>Melanie B Jacobs, My Two Dads: Disaggregating Biological and Social Paternity, Arizona State Law Journal 49, 49- 56(2006).

<sup>7</sup>Jonathan Herring. Family Law, Harlow, Longman 264-270 (2001).

<sup>8</sup>A. K. Sharma, DNA profiling: Social, legal, or biological parentage, 13 Indian J Hum Genet 88, 88–92 (2007).

<sup>9</sup> Dana Shawn Matta, Carmen Knudson-Martin. Father Responsivity: Couple Processes and the Co-construction of Fatherhood, 45 Family Process 19, 20- 37(2006).

that most families in India still work on this principle. This is of even more importance to the government, because in the absence of a father it is the State that will have to meet these legal obligations. Apart from these, fathers or male guardians are often preferred while filling out important paperwork for the child. But, determining paternity has been proved to be the most important in property disputes, which comprise a large portion of the civil suits.<sup>10</sup>

### ***Current Laws Pertaining to Paternity and DNA Technology***

At present, in 2020, there is no specific legislation that deals with paternity disputes and specifically the use as well as the misuse of DNA technology in paternity disputes. Section 112 of the Indian Evidence Act<sup>11</sup> comes the closest to a law that governs the determination of paternity and legitimacy. The Section deals with the conclusive proof that is required to prove legitimacy of the child. According to the Section, if the child is born during the time period of a valid marriage or is born within 280 days from the dissolution of the marriage, then the child would be said to be legitimate, unless conclusive proof is provided to prove that there was no relationship between husband and wife during said period.<sup>12</sup> The underlying legal reasoning for this section lies in the Latin maxim “*pater est quem nuptiae demonstrat*” which means “he is the father whom the marriage indicates”. In *Bhima v. Dhulappa*<sup>13</sup>, the court held that “This Section is based on the principle that when a particular relationship such as marriage is shown to exist, then its continuance must prima facie be presumed”.

It is vital to know here, that the law tries to determine the exact date of the birth of the child, something which even science can't put an exact estimate on. 280 days is not based on scientific knowledge, but is based on law's presumption of science. As the Section presumes marriage as the determinant of paternity, the scope of DNA technology remains limited.<sup>14</sup> Considering that the law was drafted almost a 140 years ago, when science did not provide for any conclusive method to determine paternity, the law did not even consider the possibility of DNA technology.

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<sup>10</sup>*Supra* 9.

<sup>11</sup>The Indian Evidence Act, 1872, §112.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Bhima v. Dhulappa*, (1904) 7 Bom LR 95.

<sup>14</sup>*Supra* 18

This law is also largely based on what is considered to be public morality. In *Sham Lal v. Sanjeev Kumar*<sup>15</sup>, the court held that, “In a civilized society it is imperative to presume the legitimacy of a child born during continuation of a valid marriage and whose parents have access to each other. The mentioned Section is based on presumption of public morality and public policy”.

In the case of *Kanti Devi v. Poshi Ram*<sup>16</sup>, the Apex Court recognised that the law was drafted at a time when DNA technology or science in general was not advanced enough to conclusively determine paternity. However, the Court also gave the upper hand to marriage as the determinant of the legitimacy of a father-child relationship rather than the result of a DNA test. This, according to the court was done “in favour of the innocent child being bastardised”. Hence, irrespective of the results of the DNA test, paternity will be determined by existence or non-existence of a valid marriage. In *Shradha v. Dharmal*<sup>17</sup>, the Court held that an order directing a party to undergo a medical test with respect to issues of paternity is not violative of fundamental rights and if the respondent refuses to undergo such a test then “the Court will be entitled to draw adverse inference against him”.

The Section also states that if the parties are able to non-access between husband and wife, only then can legitimacy of the child be disproved. In *Gautam Kundu v. State of West Bengal*<sup>18</sup>, the court held that non-access must be proved by a “strong preponderance of evidence and not by a mere balance of probabilities”.

### ***Paternity Disputes in India***

Although, there isn't an exact number as to the frequency of paternity disputes that occur in India, it cannot be ignored. The advent of DNA technology has only fuelled this number, with courts having to deal with the advancements in science that make it easier to determine paternity. This is of even more significance because the law hardly places any importance on DNA technology, even though DNA tests are gaining momentum.<sup>19</sup>

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<sup>15</sup>*Sham Lal v. Sanjeev Kumar*, (2009) 12 SCC 454.

<sup>16</sup>*Kanti Devi v. Poshi Ram*, (2001) 5 SCC 331.

<sup>17</sup>*Shradha v. Dharmal*, (2003) 3 ALD 1 (SC).

<sup>18</sup>*Gautam Kundu v. State of West Bengal*, 1993 Cri LJ 3233.

<sup>19</sup> Anjali Thomas, India's Doubting Fathers and Sons Embrace DNA Paternity Tests, India Ink (2013), <https://india.blogs.nytimes.com/2013/08/16/indias-doubting-fathers-and-sons-embrace-dna-paternity-tests/> (last visited Oct 7, 2020).

## THE ROLE OF DNA TECHNOLOGY IN PATERNITY DISPUTES

The determination of paternity disputes has been provided for only in Section 112 of the Indian Evidence Act<sup>20</sup> and even this section is outdated. With the advent of science and technology, DNA testing has made its way into paternity matters. Although the benefits that it brings cannot be disputed, it has also allowed for its misuse. New science and technology bring with them new problems and issues such as privacy when it comes to the use of DNA technology is pertinent for the Indian legal system to solve. However, before we discuss the regulation of DNA technology and paternity disputes, it is important to understand how exactly it has come to be used in 21<sup>st</sup> Century paternity disputes.

### *Collection of DNA Evidence*

In order for the DNA evidence to be admissible in the Court, certain scientific procedure must be followed. Each individual has unique DNA which they inherit from their biological parents. It is only identical twins that are known to have the same DNA, but this scientific anomaly is of no importance in paternity disputes. Firstly, the Court will direct the collection of blood samples from both parties. Blood group studies cannot establish who the father is but can eliminate a certain candidate as the father. This is primarily based on the science that the child inherits his/her blood type from the parents. For example, if the blood type of the child is different from both the alleged father and the mother, then there is no possibility that the man is the father of the child.<sup>21</sup> With the passage of time, this blood grouping system for determination of paternity became more effective and conclusive. However, DNA Profiling is considered to much more effective than blood grouping because it can positively determine the paternity rather than just excluding a candidate. The process for this is also the same, where samples from both the parties are collected and DNA is extracted from these samples. Here the sample is not necessarily the blood of the parties.

Once the court has ordered the collection of DNA sample of the parties, it is usually a third party that is made responsible for its collection. The third party could either be the investigating officer or a forensic expert.<sup>22</sup>

### *Role of the Investigating Officer in the Collection of DNA Evidence*

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<sup>20</sup>Supra 18.

<sup>21</sup>Mishra A, Sathyan S. Role of DNA fingerprinting in disputed paternity. 1 MED PHOENIX 44, 44-46 (2016).

<sup>22</sup>Ibid.

In most cases, whether criminal or civil, the court would direct the investigating officer to facilitate the process of collecting samples from the parties. It could also be done by a forensic expert, but in most cases the court would direct the investigating officer to do so. A recurring problem is the tampering of DNA evidence. This could be done either during the collection or transportation of the DNA sample or could even happen in the scientific laboratory.<sup>23</sup> While they are most common in criminal investigations, where DNA samples are usually collected from the crime scene, such mistakes could even happen in civil disputes. Tampering of evidence must be a major concern for legal systems, especially the Indian legal system. While the Indian Penal Code deals with the tampering of evidence during investigation and makes it punishable<sup>24</sup>, a law that would specify the process of collection as well as handling of the DNA sample is yet to be formulated for paternity disputes. The false identification could have lasting effects on both parties.

### *Case Laws*

There have been various cases that have been brought in front of the judiciary to deal with new found challenges that DNA technology poses in paternity matters. While some case laws have led to rather reformist judgements, some case laws have decided to stick to laws given in the book. In *Goutam Kundas case*<sup>25</sup> as well as in *Kanti Devi v. Posshiram*<sup>26</sup>, the court did not resort to a DNA test to determine paternity because of the stigma it would create for the child upon obtaining the results. In fact, in the latter case, the court held that the burden of proof must lie between “preponderance of possibilities” and “beyond reasonable doubt”.<sup>27</sup> However in *Goutum Kundu v. State of West Bengal*<sup>28</sup>, the court ruled that the evidence under Section 112 of the Indian Evidence Act must be based on a “strong preponderance of evidence” and must not be based on probabilities.

In *Bommi v. Anr. v. Munirathnam*<sup>29</sup>, the court touched upon the rights of a minor child in procedure of determining paternity. The court held that ordering a minor to undergo a DNA

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<sup>23</sup>Helena Machado & Rafaela Granja, DNA Technologies in Criminal Investigation and Courts, in Forensic Genetics in the Governance of Crime 45–56 (Helena Machado & Rafaela Granja eds., 2020), [https://doi.org/10.1007/978-981-15-2429-5\\_4](https://doi.org/10.1007/978-981-15-2429-5_4) (last visited Oct 7, 2020).

<sup>24</sup>The Indian Penal Code, 1860, §204.

<sup>25</sup>*Goutum Kundu v. State of West Bengal*, AIR 1993 SC 2295.

<sup>26</sup>*Kanti Devi v. Posshiram*, AIR 2001 SC 2226.

<sup>27</sup>*Ibid.*

<sup>28</sup>*Supra* 18.

<sup>29</sup>*Bommi v. Anr. v. Munirathnam*, 2004 (5) CTC 182.

test to determine the paternity is not violative of the rights of the child and is in fact being done for the benefit of the child *in praesenti and in future*.

In *Abdul Salam v. Chalil Sajida and Anr.*,<sup>30</sup> the ruled that there would be no use in conducting the DNA test until the respondent is able to prove non-access under Section 112 of the Indian Evidence Act. In *Chanderdevi v. State of Tamil Nadu by Inspector of Police, C.B. CID*<sup>31</sup>, the court held that in order to positively affirm paternity, the court does not require a DNA data bank.

Even though in the cases of *Kanti Devi v. Poshi Ram*<sup>32</sup> and *Shradha v. Dharmal*<sup>33</sup>, the courts have held that they can determine paternity through a DNA test, it wouldn't be wrong to conclude that most cases have not favoured the use of DNA technology. However, in the light of the two previously mentioned cases, DNA tests are being used more often and is also altering the stance of the courts on DNA technology. But there have also been some important questions raised with respect to their legality and more specifically, their constitutional validity.

## FUNDAMENTAL RIGHTS AND THE MISUSE OF DNA TECHNOLOGY

Changes in science and technology affects every sphere of civic life and it is the role of the legal system to effectively embrace the desirable changes while also simultaneously adapting to the undesirable ones. The current law that governs paternity disputes<sup>34</sup> is not in concurrence with the needs of the 21<sup>st</sup> Century and does not take into account the strides that DNA technology has made in the field. However, certain valid concerns regarding the misuse of DNA technology have been raised, especially with the implications it has on the Constitutionally guaranteed fundamental rights. It is the fundamental right of the right to privacy that is primarily being discussed in the paper.<sup>35</sup>

### *The Right to Privacy*

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<sup>30</sup> *Abdul Salim v. Chalil Sajida and Anr.*, 2003 (1) DMC 774.

<sup>31</sup> *Chanderdevi v. State of Tamil by Inspector of Police, C.B. CID*, (2002) (8) JT SC 329.

<sup>32</sup> *Supra* 26.

<sup>33</sup> *Supra* 17.

<sup>34</sup> *Supra* 18.

<sup>35</sup> Nupur Chowdhury, *Constituting Paternity in India* (2017).



Article 21 of the Indian Constitution guarantees to every citizen “the right to life and personal liberty”.<sup>36</sup> Encompassed within this right, through various judicial pronouncements, is the right to privacy, a dynamic and evolving concept in the Indian legal system.<sup>37</sup> The right to privacy is “the right of a person to be free from intrusion into or publicity concerning matters of a personal nature”<sup>38</sup>. The landmark case of *K.S. Puttaswamy v. Union of India*<sup>39</sup> recognised the “right to privacy” as an intrinsic part of Article 21 and made space for it in the Indian legal system. It is to be noted here that while this right had been internationally recognised for many years and was also of deep concern for legal systems worldwide, it was recognised as an enforceable right only in 2017 through the *Puttaswamy judgment*<sup>40</sup>.

In *Kharak Singh v. State of Uttar Pradesh*<sup>41</sup>, many years before the *Puttaswamy judgment*, the court addressed the right to privacy, however, a six-judge bench of the apex court did not recognise the right as a fundamental right. Justice Subba Rao, who dissented, said that “the right to privacy is a fundamental part of the right to personal liberty although it was not declared as a fundamental right under the Constitution”. Eleven years later, in *Gobind v. State of Madhya Pradesh*<sup>42</sup>, a three-judge bench of the Supreme Court recognised the right to privacy as an essential part of Article 21. Even though the party contending the right to privacy lost, it was the first time that privacy was considered an essential part of personal liberty.

The *Puttaswamy judgment*<sup>43</sup> is the most relevant in our discussion of the right to privacy. The petitioner was a 91-year old retired Karnataka High Court judge and he challenged the Aadhar scheme of the government. Aadhar is a “12-digit unique identity number that can be obtained voluntarily by residents or passport holders of India, based on their biometric and demographic data”<sup>44</sup>. The Aadhar Scheme of the government made it necessary to have an Aadhar card to avail certain benefits from the government. The petitioner contended that the

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<sup>36</sup> *Supra* 7.

<sup>37</sup> *Ibid.*

<sup>38</sup> Legal Definition of RIGHT OF PRIVACY, , <https://www.merriam-webster.com/legal/right+of+privacy> (last visited Oct 8, 2020).

<sup>39</sup> *K.S Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Kharak Singh v. State of Uttar Pradesh*, 1964 SCR (1) 332.

<sup>42</sup> *Gobind v. State of Madhya Pradesh*, 1975 (2) SCC 148.

<sup>43</sup> *Supra* 39.

<sup>44</sup> Aadhaar Card: How to Apply Aadhaar Card, Aadhaar Linking, Latest News on Aadhaar Card, , <https://timesofindia.indiatimes.com/topic/Aadhaar-card> (last visited Oct 15, 2020).

right to privacy is a fundamental right and that this right must be recognised by the court as a part of the right to personal liberty under Article 21. On the other hand, the respondents contended it was only the right to privacy that was Constitutionally guaranteed and that the right to privacy was a part of it only to a certain extent. A Constitution bench was set up by the Supreme Court to decide on the matter. The bench overruled the judgment of *Kharak Singh v. State of Uttar Pradesh*<sup>45</sup>, to the extent that the judgment did not include the right to privacy as a fundamental right. The bench ruled that the right to privacy is a Constitutionally guaranteed fundamental right and is an intrinsic part of the right to life and personal liberty.<sup>46</sup>

### *DNA Testing and the Right to Privacy*

The *Puttaswamy judgment*<sup>47</sup> deals with people submitting their biometric data in the form of Aadhar in order to avail certain government benefits. As the apex court rightly held, this is in direct violation of the right to privacy. Biometry or biometrics is “the measurement and analysis of unique physical or behavioural characteristics (such as fingerprint or voice patterns) especially as a means of verifying personal identity”<sup>48</sup>. Similarly, DNA tests are “a test in which someone’s DNA is analysed, for example to see if they have committed a particular crime or are the parent of a particular child”<sup>49</sup>. Both are the collection of private data, while the means of collection may be different. Biometrics as well as DNA tests are used to identify individuals.

It is clear that for a DNA test to be conducted, a blood or DNA sample must be obtained from the person who is to be tested. However, the question arises whether the court can compel a person to undergo a DNA test against his will and whether this compulsion would violate his fundamental rights. In *Shradha v. Dharmal*<sup>50</sup>, the court ruled that a court order compelling a person to undergo a DNA test is not violative of fundamental rights and if he refuses to do so, then the court would conclude otherwise. Hence in the absence of a legislation, it is clear that in the case of DNA testing in paternity matters, the court can force a person to undergo a

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<sup>45</sup>Supra 41.

<sup>46</sup>Supra 39.

<sup>47</sup>Ibid.

<sup>48</sup> Definition of BIOMETRICS, , <https://www.merriam-webster.com/dictionary/biometrics> (last visited Oct 16, 2020).

<sup>49</sup> DNA test definition and meaning | Collins English Dictionary, , <https://www.collinsdictionary.com/dictionary/english/dna-test> (last visited Oct 16, 2020).

<sup>50</sup>Supra 17.

DNA test. On the other hand, in *Gautam Kundu v. Bengal*<sup>51</sup>, the division bench of the Supreme Court held that no court in India can order a blood test as a part of standard procedure and no one can be forced to give their blood samples for analysis. In this case, the court heavily depended on Section 112 of the Indian Evidence Act. Hence, at different points of time, courts have expressed differing opinions on the use of DNA technology in paternity disputes.

The core of the debate between DNA testing and the right to privacy, is the right to have access to personal information about oneself.<sup>52</sup> The right to privacy also includes anonymity and restrictions on physical access of the personal information. This right is also recognised by international human rights law and has also found a place in many human rights instruments like the UDHR.<sup>53</sup> However, to what extent does DNA technology conform with these rights and whether DNA tests are an exception to the right to privacy is an important question to ask. As there is no legislation in India that deals with such problems, most of our understanding is derived from the interpretation of international law. Article 17 of the International Covenant for Civil and Political Rights (ICCPR) provides that no one should be subjected to unlawful interference to privacy and that everyone must be protected by law from such violation of privacy.<sup>54</sup> However, Article 21 of the same covenant states that such a right can only be limited if it is necessary to maintain public order or public morals or if it is required for the protection of the rights of others.<sup>55</sup> Hence, it can be said that the right to privacy is not absolute in nature, in the context of Indian laws as well as international human rights.

The right to privacy is often balanced with the interests of society, in which even the person is a stakeholder. The determination of paternity, as mentioned before, has various implications for the father as well as the child. It determines child care, property distribution and also has social consequences for the child. In such cases, DNA testing is in the interest of not just the child, but the society as a whole. However, accuracy of DNA tests as well as private testing has led to the misuse of paternity tests. Due to the occurrence of high-profile

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<sup>51</sup>*Gautam Kundu v. Bengal*, (1993) 3 SCC 418.

<sup>52</sup>Elizabeth B Ludwin King, A Conflict of Interests: Privacy, Truth, and Compulsory DNA Testing for Argentina's Children of the Disappeared, 44 35.

<sup>53</sup>*Ibid.*

<sup>54</sup>ICCPR. art.17.

<sup>55</sup>ICCPR. art.21.

cases like that of N.D. Tiwari, DNA technology's role in the determination of paternity has gained momentum. With the inception of private labs, the ease of acquiring paternity tests at a cheap price has also increased. DNA testing centres that conduct these tests state that most of their customers are doubting husbands and fathers who seek to end their marriage. These tests are also being used to evade the responsibility of providing alimony and child support by seeking divorce on the grounds of adultery. This is in direct contrast to the courts who seldom resort to DNA tests to establish paternity.<sup>56</sup>

### ***The Right Against Self-Incrimination***

This right has little to no significance in our discussion of DNA tests and determination of paternity, however, it has wide ranging consequences in criminal law. The Indian Constitution guarantees this right to all defendants under Article 20(3)<sup>57</sup> and provides that defendant must be informed of their rights before doing anything that may incriminate them. DNA tests require the defendant to submit his/her own blood samples for the cause of investigation and it is here that debate about the right against self-incrimination picks up from. However, just like for paternity disputes, the law surrounding DNA technology and criminal law is insufficient.

While the right to privacy has been recognised as a Constitutionally guaranteed fundamental right by Indian courts, its role in paternity disputes has not yet been specified. Indian courts have varying opinions on the issue which makes it even more ambiguous. Paternity and the determination of paternity has much significance with respect to its position in Indian society as well as its position in the Indian legal system. The right to privacy is a fundamental part of this significance and any discourse on DNA technology and paternity disputes is complete without the mention of the right to privacy.

## **CONCLUSION AND SUGGESTIONS**

### ***Conclusion***

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<sup>56</sup> *Supra* 26.

<sup>57</sup> India. CONST. art.20.

Whether in civil disputes or criminal disputes, DNA technology, if misused, poses great risks to our Constitutionally guaranteed fundamental rights. In our paper, the implication of the use of DNA tests in paternity disputes on the right to privacy has been studied. Like any other fundamental right, the right to privacy also has certain reasonable restrictions placed on it. Paternity, as discussed, has wide ranging social, legal and economic implications on the child and hence, the determination of paternity comprises a large portion of civil disputes. With the advent of science and technology, the scope and reach of DNA technology has also increased. Private DNA tests are cheaper and more easily available, paving the way for its misuse. However, the law has not developed at the same speed and in several aspects is still lacking. This has caused a large gap in the Indian legal system and if left untreated any longer, it would have wide ranging implications on Indian society. Hence, to bridge these gaps and to keep up with modern day science and technology, it is important to bring certain changes in the Indian legal system as to the use of DNA tests in paternity disputes.

## ***Suggestions***

### 1. A Comprehensive Law

It is clear that the lack of a law governing DNA technology in paternity disputes has left a huge gap in the system. The only tangible way of bridging this gap is by introducing a comprehensive legislation that takes care of all aspects of the issue. The differing opinions of the judiciary on the use of DNA technology has called for a law that addresses this ambiguity. The law must not only take into account modern day science and technology but must also consider any new discoveries or changes that DNA technology might undergo.

### 2. The Right to Privacy

Although, the scope and extent of the right to privacy is still being discovered by the Indian judiciary, the laws as well as the courts must take it into account whenever they are dealing with DNA testing in paternity disputes. The law must also cover this aspect and must ensure that the restrictions placed on this right are reasonable and not arbitrary in nature. Methods to ensure confidentiality and anonymity, wherever possible, must be actively pursued by the Indian legal system.

### 3. Curbing Private DNA Testing

DNA testing is now much more easily available and has found itself useful outside of paternity disputes in courts. DNA technology is being used to escape legal obligations, especially by husbands and fathers, who are using it to accuse wives of adultery and trying to escape the legal obligations of alimony and child support. A law curbing the misuse of DNA technology must be brought about to prevent the corruption of DNA testing.

#### 4. Section 112 of the Indian Evidence Act

Section 112 of the Indian Evidence Act is currently the only law in place that puts forward the method of determining paternity. However, this law is in many ways outdated. The law does not take into account the accuracy of DNA Testing as well as increase in its usage. The law places extreme importance on marriage and has become irrelevant in cosmopolitan societies as it takes into account only traditional families. The law must account for not only changing science and technology, but also must consider the changing landscape of the Indian society.