

BOOK REVIEWS

ASSISTED REPRODUCTION AND CONFLICT IN RIGHTS (2016). By Dr. G.K. Goswami. Satyam Law International, 2/13, Ansari Road, Daryaganj, New Delhi- 110002, India. Pp. xx + 145. Price: Rs. 495/-

THE BOOK under review¹ discusses various aspects relating to assisted reproductive technology, infertility and law and policy on reproduction in great detail. Distinguished jurist Upendra Baxi in his “Foreward” to the book observes that “the work is courageous, given strongly entrenched social prejudice and the sovereignty of heterosexuality. But the courage owes a lot to the socio-ethical conviction and the noble craft of research”.² Shabihul Hasnain J while writing “An Overview from Judicial Lens” has praised the timing of the publication since the book involves an area which requires immediate attention.³ The judge has also suggested further research questions which have evolved from the present work which may be dealt by the author in his sequel to the present book⁴ The book is a concerted effort to bring the synchronized information and analysis on the present theme and reproductive tourism which is highly relevant in today’s context. The author has introduced the contours of infertility and its associated tenets and dimensions.⁵ The book runs into 145 pages covering seven chapters logically arranged so as to narrate the contemporary and comparative account of assisted reproductive technology in India as well as abroad.

The first chapter of the book exhaustively throws light on reproduction as the quintessence of life charting out sexual orientation and procreation as the biological phenomenon within the strict socio-legal control.⁶ It further discusses about the limitations faced by children in tracing his/ her genetic origin despite the fact that various international conventions advocate for child’s right to know parentage. Also, the complexities arising due to techniques like IVF have been discussed comprehensively in the context of disclosure of the identity of one’s genetic progenitors.

1 Dr. G.K. Goswami. *Assisted Reproduction and Conflict in Rights* (Satyam Law International, New Delhi, 1st edn., 2016).

2 *Id.* at vi.

3 *Id.* at viii.

4 *Id.* at ix.

5 *Ibid.*

6 *Id.* at 1- 17.

The chapter further advances the legal framework on child's right to know the parentage and emerging issues relating to the assisted reproductive technology in India. The author has emphasized on the urgent need to strike a balance between the competing rights and at the same time to conduct legal impact analysis of ARTs, surrogacy and fertility tourism. Relevantly, the fine nuances of proposed ART Bill in India are discussed in detail along with the legal gap analysis of promoting equitable justice for a child to know his/ her parentage.

The second chapter discusses the conceptual contours of fertility thereby explaining the concept of male infertility as well as female infertility in detail.⁷ The author has rightly located the multiple ethical and religious issues relating to ARTs including artificial insemination, in vitro fertilization, gametes (sperms and ova) and embryos donation, surrogacy and cloning. Thus, it is to be seen that the author has significantly discussed the medical response towards infertility management with the aid of assisted reproductive technologies. It is to be noted that the use of ARTs globally is increasing and India has emerged as a global hot spot for fertility tourism. This analogy is well supported with the help of diagrammatic representations in the book.

While discussing about sexuality and procreation, the author pointed out that sexuality and fertility since ages were interlinked. The era of individualization of human rights has opened new vistas in the domain of sexuality resulting in the emergence of rights of reproduction as individual's personal affair. Moreover, to bring more clarity, the international history of the reproductive rights has been traced in particular covering article 16 of the Universal Declaration on Human Rights, 1948, (UDHR); article 23 of the International Covenant on Civil and Political Rights, 1966, (ICCPR) ; article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). The author has further discussed articles 7 and 8 of the UN Convention on the Rights of the Child, 1989 (CRC) which confers child's right to know parentage. Also, the Convention on the Elimination of All Forms of Discrimination against Women, 1979(CEDAW) endorsed radical feminine approach by strengthening reproductive rights.

Delving in the international history of the reproductive rights, the author has mentioned about the important developments such as Cairo Programme of Action as the first global policy document describing reproductive health. Moreover the efforts at the regional level such as the European Convention on

7 *Id.* at 18- 46.

Human Rights, 1950, the European Social Charter, 1961 and the American Convention on Human Rights, 1969 have been discussed exhaustively.

An appropriate space has been correctly assigned to the challenges pertaining to the reproductive rights under the new format of human rights. Further, with the help of the diagrammatic representation, the diverse and complex possibilities of social/ legal and genetic parentage relating to legally married couples, children out of rape, children of LGBTs have been discussed. At the end of the chapter, the author has discussed the role which medical science and technology especially DNA forensics play in enabling infertile people to bear children and also facilitating the child to know the biological truth of his origin.

The third chapter converses the theoretical framework of assisted reproduction which integrates various dimensions of the subject matter, thereby setting the boundary of the research study in the most scientific manner.⁸ While discussing the various concepts of governance of human population, *Foucaultian* framework as well as the theory proposed by John Rawls has been discussed. The scholarly work also lauds the efforts of the United Nations Organisation (UNO) and the World Health Organisation (WHO) which have recognized the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and also to have the information while making decision concerning reproduction free of discrimination, coercion and violence.

It is interesting to note that the author has examined the issue of justice under assisted reproduction through the lens of four liberal thinkers- John Rawls, Amartya Sen, Martha Nussbaum and Onora O' Neil- to argue in favour of equitable justice in the process of assisted reproduction. While discussing the future challenges, the author has pointed out that the society is a dynamic identity and the law must adapt and adopt social changes. Further, it is opined that ARTs have revolutionized human reproduction but complicated various personal issues. Substantiating the same argument, the author states that in the era of individualism, the institutions of marriage and joint family are decaying, live-in relationships have become the symbol of modernity, nuclear, single and virgin parenting is on the rise, heterosexuality for procreation is pushed to the back seat and that the designer baby is in great demand.

The social life of an individual is conditioned upon dogmatic linkages of religion and personal laws which has been explained and covered comprehensively

8 *Id.* at 46- 67.

under fifth chapter of this book.⁹ Medical intervention in procreation is analyzed from the Quranic perspective. Infertility treatments under Sharia, Hadiths and Sunni Law have been explained lucidly. Also, the religious responses under Hinduism, Buddhism, Judaism and Christianity have been extensively discussed.

The author has been instrumental in bringing out significantly the socio-legal response towards medically assisted procreation which majorly attracts apposite balance between legislation and reproductive liberty as well as the interplay between ethics and legislative intervention. The major challenges affecting reproductive tourism have been minutely speculated through the academic lens focusing on the religious turbulences, procreation beyond marital boundaries, rights of LGBTs and so on and so forth.

The author has appropriately pointed out that the legal latches and deficiencies in fertility management regimes warrant urgent global attention and that the religious interpreters in collaboration with the international institutions like WHO must adopt 'Living Tree' approach of legal elucidation to construct generic legal framework as precursor in law under various jurisdictions. Further, it has been rightly suggested that state health care programmes must incorporate the infertility management to bring proceeds of science to the door steps of poor and marginalized couples thereby saving them from localized illicit medication.

Moving towards the academic discourse on law and policy on reproduction, international, regional and national legal framework has been discussed at length. At the cost of repetition, the author has charted out the relevant provisions under the United Nation Convention on the Rights of the Child, 1989 and thereby emphasizing on the needs of protecting child's rights to know its parentage, the reversal of which would pose eminent danger for the interest of the child. Also, the author has comprehensively discussed the regional legal framework on the right to know parentage which encompasses outlining of European Convention on Human Rights, 1950 and the Hague Convention on Protection of Children and Co-operation in respect of Inter- country Adoption, 1993.

The right to know parentage under various jurisdictions like that of France, United Kingdom, United States of America and Germany has been covered so as to bring out the best analysis of the current scientific as well as socio-legal trends in the assisted reproduction technology. Further, by using case study method, the legality involved in assisted reproduction technology has been

9 *Id.* at 68- 94.

brought out. The whole analogy discusses that the best interest of the child became the golden rule apart from marital presumption in determining parentage.

The author through case law illustrates that few states in US like Iowa, recognized the right of putative father to challenge the status of social father. With respect to legal perspective in India it has been provided that the Indian Constitution does not recognize any specific child's right to know parentage but article 21 encompasses such a right under the ambit of right to dignified life.¹⁰ Further, the provisions under the Indian Evidence Act, 1872 dealing with presumptions of paternity and assuming fatherhood as a legal fiction has been discussed extensively.

In order to analyze the legislative measures relating to ARTs, the Assisted Reproduction Technology (Regulation) Bill of 2008, 2010, 2013 and 2014 have been explained in the comparative and critical mode. It is rightly reflected that ARTs *per se* do not offer infertility treatment rather assists in reproduction which means ARTs offer individualized biotechnological solutions to social problems of not having one's own child. Moving further, the judicial trends in India, starting from *Goutam Kundu case*¹¹ to *Robit Shekhar case*¹² bring out the various judicial dilemmas concerning the issues relating to paternity determination.

It is to be noted that in all the judgments the emphasis was to protect the interest of child as not being branded as '*bastard*' and the mother as an '*unchaste woman*'. Also, the *ratio* of related judgments indicates the trends of Indian judiciary to put more reliance of social parentage over biological parentage. While dealing with parentage issues under assisted reproductive technology the author has also discussed the parentage issues under adoption of a child, thereby interlinking the commonalities between the two concepts. The bottom line relating to child rights under adoption and ART remains the same that the child at the age of maturity has the right to know his biological origin. Various judicial pronouncements covering adoption related issues have been extensively covered in the present work.

The sixth chapter refers to the kind of research tools employed in the present study.¹³

10 *Peoples Union for Civil Liberties v. Union of India* (1997) 1SCC301.

11 AIR 1993 SC 2295.

12 *Robit Shekhar v. Narain Dutt Tiwari*, 2012 (1) SCC 169.

13 *Supra* note 1 at 133- 141.

The author has rightly adopted socio-legal research methodology to study the problem under question. A multi-pronged method is used to encompass different dimensions of the social realities. Since, the domain of law and structure of society is by itself complex, a social issue and its legal paraphernalia can be best understood by way of combining the two realms.

The author has used different qualitative methods to obtain empirical legal data and also, aptly used common man's perceptions of law and justice to analyze the given research problem. The author has been implicitly guided by the Aristotalian view of man as a social animal which is revealed by the fact that procreation remains the basic instinct of human beings for generational perpetuity. Hence, the event of infertility has been considered as a social stigma leading to various societal deficiencies and more often than not it leads to gender discrimination against women who are more prone to such social differential treatment as has already been located in the various judicial pronouncements cited by the author.

Further, other associated social and legal issues pertaining to ARTs have also been given ample space by the author in his work such as rights concerning LGBTs, couples in live-in relationships, single parentage and so on and so forth. Finally the author emphasizes and favours the established right of the child to know his bio-genetic heritage as a matter of his legal right.

In the last chapter encapsulating conclusion, the author concludes that the assisted reproductive technology has come as a boon to the needy couples. Thus, the book gives a simple and concise picture of social and legal perspective of assisted reproduction in India and other jurisdictions. The analysis and insights of the author are relevantly supported by legislative provisions and judgments of the Supreme Court and various high courts. The case study conducted by the author is particularly very insightful and all the topics which have been included are discussed in a uniform, constructive and harmonious manner. The book under review is a significant addition to the literature on the subject and is very useful for judges, lawyers, academicians and law students on the subject of assisted reproduction and conflict in laws.

*Furqan Ahmad**

*Daksha Sharma***

* Professor, Indian Law Institute, New Delhi.

** Ph.D. Research Scholar, Indian Law Institute, New Delhi.