PART-II

THE CONCEPT OF LEGAL IMPLICATIONS
AND STATUS OF TEST TUBE BABY
CHAPTER - 1, PART - II

LEGAL IMPLICATIONS
AND STATUS OF TEST TUBE BABY
GENERAL DISCUSSION

It goes without saying that this recent concept of TTB has provided significant reliefs to the infertile couples of modern welfare states all over the world including India. But it has simultaneously invited legal complications and implications of multifarious dimensions. The repercussion of which is serious and grave. The process and procedure of begetting TTB appears to be simple and easy. But in fact it is replete with complex and typical problems having legal consequences of far reaching effect. In the absence of due care and proper management having the force of law to enforce and implement; these problems shall land the society as a whole in the midst of legal tangles without any solution. If these legal tangles remain unsolved, the very foundation and basic structure of social harmony especially in the Indian society shall be shaken and shattered. The traditional Indian society shall gradually wither away giving rise to a society which has never been heard of, projecting thereby altogether a different shape and structure which would hardly befit in or coincide with the existing legal system and set of laws in India. Even the old age customary laws which have hither to been outweighing the general laws of the land, in all probabilities, shall loose their force in India. This dynamically changed society with the invent of TTBs around us, shall have serious impact on the existing social pattern and legal set up in India. The process of TTB and procedural problems, the socio-economic problems, the matrimonial problems, law
and order problems and unforeseen typical problems of exploitation, theft and smuggling shall become the order of the day. The whole gamut of these problems shall create havoc in the Indian Society if allowed to stand. Let us analyse and see how it is likely to go around us.

The existing process, procedure and trend of attitude to somehow beget TTB even with the help of donated sperm, eggs, embryos and surrogate mothers is the root cause which strengthens the apprehension of this impending havoc. The complications shall raise their ugly heads from the very beginning of keeping and maintaining the records as well as storing and ensuring the safety and secrecy of the sperm, eggs and embryos frozen or otherwise. Because it would entail the possibilities of manipulating the records and stored sperm, eggs and embryos by the person having vested interest and evil designs. These possibilities would germinate the seeds of other problems relating to tampering with the records and committing forgery and fraud therein as well as extortion, theft and smuggling of sperm, eggs and embryos. The possibilities of exploiting and smuggling of the surrogate mothers can also not be ruled out. These incidents would lead to breach of trust, breach of peace, unrest, anger, revengeful attitude, affray, riots and all that leading to law and order problems. In the absence of properly and effectively supervised, preserved, secured and maintained records, it shall be extremely difficult task to investigate, detect, locate, identify and ascerte the wrongdoers or cause of those untoward incidents which require judicial consideration and judicious mind to decide the issue. The issue to be so decided might be the outcome of innocence, negligence or deliberate act; or of fraudulent, dishonest and malafide intention coupled with revengeful or vengeance feelings, attitude or conduct whereby the donated sperm, eggs, or embryos are found missing, surreptitiously tampered with, exchanged,
mixed, destroyed stolen or smuggled. Owing to the long chain of people engaged in the process and procedure of begetting TTB, which involves a series of individuals right from the office peons, technicians, assistants, nurses and doctors, apart from the onlookers, visitors, guests, friends and relatives of the patient and the office bearers; it becomes next to impossible to detect and catch the defaulter or culprit. It would appear to be more apprehensive when you have a look at the scenario in and around any IVF clinic only to find like a mini village fair, picnic or gathering of any ceremonial occasion. That practically experienced and realised all this during the visits (vide Appendix - XI hereto) to some of the clinics engaged in producing TTB in India. Who, when and how one might do the evil deed to fulfil one's evil design or ulterior motive can hardly be known at the first glance. Majority of these untoward incidents would tend to disturb peace and tranquillity in the society. This disturbance would lead to mess of affray, riots leading to law and order situation. Then it would be an added burden on the administrative and executive wings of the government, for government is bound to maintain peace and tranquillity, so also to provide safety, security and secrecy to the citizen and enforce law and order in any modern welfare state like India so as to achieve harmonious atmosphere essentially required for the healthy growth of its society.

Likewise, the socio-economic, matrimonial and other typical legal problems are also likely to come up with the ever increasing production of TTBs in India without any legal check on them.

All these problems and legal implications shall have serious repercussions on the whole state of affairs relating to TTB, which would seriously affect the status of TTB as required to be at par with the NBB (Naturally Born Baby). To provide
and secure the rights of TTB and to ensure social recognition and respectable place in the society to TTB in India will be extremely difficult task, in the absence of any legal force behind it to provide, enforce and implement the same. Imagine a situation of an abandoned TTB by the parties after begetting, may be due to their personal misunderstandings, differences, matrimonial quarrels, indifferent behaviour and conduct after begetting TTB towards each other, or any other reasons leading them to divorce or separation, legally or otherwise, reaching the point of no return. Then, where TTB would go? Who would maintain such TTB? If none cares for such TTB, the possibility of his or her becoming street boy or girl or beggars or hard core criminals cannot be ruled out. Again all these problems would be additional burden on the government to tackle by rehabilitating them and maintaining law and order.

The detailed discussion of all these problems and legal implications has been taken up in the following chapters.