CHAPTER - 2, PART - II

LEGAL IMPLICATIONS AND STATUS OF TEST TUBE BABY :
ORIGIN AND SCOPE

2.1 The concept of legal implications of Test Tube Baby :-

From the close analysis of the modes and methods of begetting TTB, as discussed in previous chapters, it is crystal clear that there are different modes and methods for different categories of infertile married couples desiring to beget TTB known as Recipient Parents. This is so because the problems, situations and circumstances are not same in all the cases of infertile couples. Some are facing male side infertility whereas the others are in the grip of female infertility. There is still another situation where both male and female are infertile. In all these situations third party involvement comes into play for begetting TTB. Sometimes, this third party is male or a female or both a male and a female. According to particular situation and circumstances where recipient parents are not active participants, this third party comprises of :-

- One male and one female ; or
- One female only; or
- One or more males and one female ; or
- One or more males and two females ; or
One or more male and three females; or
- Two males and three females.

Before tracing the origin and going to the scope of legal implications and status of TTB, it is essential to understand the composition of third party and those compelling circumstances or situations under which the involvement of third party becomes so essential and desirable which can be done by analysing the categories of those situations and circumstances as follows hereinafter.

2.2 Categories of situations and circumstances to beget TTB with the help of third party comprising of one or more persons; male or female or both:

There are as many as six categories of situations and circumstances under which the infertile couples are compelled to go for TTB. Out of which five categories involve third party for begetting TTB and in two particular categories the maximum number of persons; male and female comprising third party jumps upto six; and more if the sperm used are obtained from more than one donor. Some of them are active participants and some are not so. Let us see how and when it happens.

But before going for that, it is essential to understand the situation and circumstances under which the TTB is obtained, without the involvement or help of third party in any form. This category is stated hereinbelow:

Both spouses; husband and wife; fertile and capable but ineffective for natural pregnancy:

In a situation where both spouses are fertile and capable of producing a child but ineffective to achieve pregnancy by natural means of coitus (intercourse). They
are, therefore, compelled to beget TTB for which the fertilization of egg of a woman with the sperm of her husband for pregnancy is made to occur either in vivo (inside) or in vitro (outside) in a Test Tube and then embryo is transferred in the womb of female spouse by artificial means, modes or methods already discussed in previous chapters of Part-I of this thesis.

In this case, the third party is not involved at all. The TTB is the result of active participation of husband and wife alone though only through artificial means.

Now the matter relating to third party involvement for begetting TTB can be taken up hereinbelow.

First category: husband totally infertile and ineffective for pregnancy:

In a situation where male is infertile and ineffective but wife is fertile and effective for pregnancy, the couple begets TTB with the help of sperm donated by another male. The sperm may be frozen or otherwise. The egg is provided by wife of the couple desiring TTB.

In this case, the third party involved is sperm donor a male member of the society who is not desirous of TTB and is only the helper for begetting TTB. So, the number of persons involved are three:

■ The husband desirous of TTB (Not active partner);
■ The wife desirous of TTB (Active partner); and
■ The sperm donor not desirous but helper of begetting TTB (Active partner). If sperm donors are more, the number of persons involved will be more than three accordingly.
In this case, wife of the couple desiring TTB and sperm donor are active participants whereas husband remains out of picture.

**Second category:** wife totally infertile and ineffective to produce egg but otherwise able to bear a child :-

In a situation where wife is totally infertile and ineffective and unable to produce egg but can otherwise bear a child; the TTB is obtained with the help of donated egg.

In this case, the third party involved is an egg donor, a female member of society who is not desirous of TTB but helps the infertile couple to beget TTB. The egg may be frozen or otherwise. The sperm is provided by husband of couple desiring TTB and the pregnancy is born by wife of couple desiring TTB. Thus the number of persons involved are three :-

- The husband desirous of TTB (*Active partner*);
- The wife desirous of TTB (*Active partner*); and
- The egg donor not desirous but helper for begetting TTB (*Active partner*).

In this case; all, the husband, wife and egg donor are active participants.

**Third category:** wife fertile and capable to produce egg and can also bear a child but at the risk of her life where bearing a child endangers her health :-

In a situation where wife is absolutely fertile and also capable of bearing a child but the process of bearing a child endangers her health and there is a risk of her life; the TTB is obtained with the help of a surrogate mother. In this case the third party involved is a female member of the society who is not desirous of
TTB but helps the couple to beget TTB by bearing a child as surrogate mother where she hands over the TTB to the couple after delivery, under the arrangement of some payment to be made to her by the couple for her services as a surrogate mother, as might mutually be settled by them. The egg is provided by the wife and sperm by the husband. An embryo is obtained by the technique of *in vitro fertilization* and then transferred in the uterus of surrogate mother who carries the pregnancy to term and delivers the child to the couple. Thus the number of persons involved are THREE:

- The husband desirous of TTB (Active partner);
- The wife desirous of TTB (Active partner);
- The surrogate mother not desirous of TTB but helps the couple to beget TTB (Active partner).

In this case also; all, the husband, wife and the surrogate mother are active participants.

**Fourth category: wife infertile, and ineffective and unable to produce eggs as well as to bear a child:**

In a situation where wife is totally infertile and ineffective and unable to produce egg and also unable to bear a child, the TTB is obtained with the help of donated egg or embryo under the arrangement of surrogate mother. Husband provides the sperm, one woman provides egg, another woman facilitates for providing embryo and still another woman bears the pregnancy to term and delivers TTB to the recipient parents (husband and wife) desirous of TTB. Therefore, the number
of persons involved are five:-

- The husband desirous of TTB (active partner);
- The wife desirous of TTB (not active partner);
- The egg donor not desirous of TTB (active partner if egg is provided by her);
- The Embryo donor not desirous of TTB (active partner if embryo is provided by her); and
- The Surrogate mother not desirous of TTB (active partner if she acts as surrogate mother).

In this case sperm used are of husband alone, so the husband is active participant. If egg donated by one woman is used for getting embryo from another woman and embryo is used for pregnancy from third woman who is the surrogate mother, then all the three women become the active participants. The wife remains out of picture. Thus the active participants become four. The number of active participants reduces to three if the egg donor, embryo donor and surrogate mother are only two. It further reduces to two if the woman is one and the same for all the purpose of donating egg, embryo and acting surrogate mother. These three women are members of society. Thus total number of persons becomes five.

**Fifth category : both husband and wife infertile and ineffective and unable to beget child :-**

In a situation where both the husband and the wife are infertile and ineffective and unable to bear the child; the TTB is obtained by donor sperm, donor egg and embryos under the arrangement of surrogate mother.
In this case another man as donor provides the sperm, one woman provides egg, another woman provides or facilitates for embryo and still another woman provides for pregnancy as surrogate mother. Thus the total number of persons involved become six:-

- The husband desirous of TTB (not active partner);
- The sperm donor not desirous of TTB (active partner);
- The wife desirous of TTB (not active partner);
- The egg donor not desirous of TTB (active partner if egg is provided by her);
- The embryo donor not desirous of TTB (active partner if embryo is provided by her); and
- The surrogate mother not desirous of TTB (active partner if she acts as surrogate mother).

If the set of third party comprising of sperm donor and different woman as egg donor, different woman as embryo donor and different woman as surrogate mother is used, the total number of active participants become four. It reduces to three if number of woman for egg donation, embryo donation and surrogate mother in the set of third party persons are two instead of three women. It further reduces to two if there is only one woman donor of egg and embryo and the same woman is also performing the duty of surrogate mother. These persons comprising third party are the members of society.

In this connection Warnock Report says, "A number of the techniques we consider involves a third party outside the infertile couple. In artificial insemination by donor (AID) another man provides the semen; in egg donation another woman
provides the egg; in embryo donation both another man and another woman contribute; in surrogacy another woman provides her uterus (womb) for the duration of the pregnancy.  

From this discussion of categories of situations and circumstances, it becomes convenient to trace out the origin and scope of the legal implications.

2.3 Origin and scope of legal implications:

In the preceding discussion we have seen that under certain situations and circumstances the third party (whether male or female or both) is often involved in begetting TTB and sometimes it comprises of more than one person who actively participate by parting with their biological origins for the purpose of begetting TTB not for themselves but for the needy infertile couple. In fact the possibility of legal implications originates from the stage of third party involvement though the possibility of legal implications cannot be ruled out in case where third party is not involved and the TTB is the outcome of the only participation of husband and wife. Because in case of husband and wife as the sole participants for begetting TTB, the biological origin for the outcome of TTB belongs to them. In common parlance, the rule of prudence suggests that ordinarily no one would refuse to accept and recognise one's blood relation to a child whose birth is the result of one's own intimacy and cohabitation with the counterpart, even if it is lacking recognition of law for the time being in force. The acceptance and recognition of blood relation with the child by the individual responsible for his or her birth is gradually accepted and recognised in the society. Thus the illegitimate child then gets the status equal to that of legitimate child in society. Even law in India provides for maintenance of illegitimate child. However the position and situation of husband and wife begetting TTB as
sole active participants, is superior and stronger in comparison to the one having an illegitimate child as they are lawfully married to each other. Moreover, the husband and wife being parents of a TTB as the outcome of their own biological origin are hardly expected to cause any fissure in their relation. Therefore, the chances of legal implications to germinate their origin from this point and stage of begetting TTB by husband and wife as sole active participants are absolutely bleak.

However the possibility of the scope of legal implications though limited cannot be altogether ruled out even if the only active participants are husband and wife themselves. But then this scope is likely to remain and shall remain confined only to the traditional matrimonial problems which, in general, are only found in rare of the rare cases of grave misunderstandings, personal differences, family quarrels and lack of mutual adjustments between the spouses or otherwise in cases of cruelty, adultery, desertion and the like or the venereal and sexually transmitted diseases, or the mental disorder, change in religion etc. leading to divorce or separation legally or otherwise. These problems are similar in nature as in case of NBB. Thus the husband and wife being married to each other and the TTB being the product of their own biological origins, any problems or legal implications can very well be taken care of by the existing pattern of law treating the TTB at par with the NBB.

Therefore, the origin of legal implications of TTB does start from the point and stage of third party involvement; especially under the situations and circumstances wherein either the husband or wife is or both are not active participants for begetting TTB. This origin widens up the scope of legal implications in the situation where third party persons as active participants are more than one. The ambit and scope
of legal implications and complications of TTB is likely to be unlimited if the maximum number of active participants for begetting TTB are involved as third party. Generally there being at least one or more persons actively involved as third party in begetting TTB for the recipient parents, depending upon their various situations and circumstances; the legal implications shall also depend upon these situations and circumstances and shall accordingly vary under different situations and circumstances. More the persons involved in obtaining the TTB, as third party active participants excluding the recipient parents, more shall be the legal implications of complex, complicated and serious nature in the society in a modern welfare state, especially in India. The nature and extent of the legal tangles, consequences and implications of TTB which provide scope for legal implications relates to the following situations.

a. Where the husband though desirous of TTB, is not the active participant in begetting TTB;

b. Where the wife though desirous of TTB, is not the active participant in begetting TTB; and

c. Where both the husband and wife though desirous of TTB, are not the active participants in begetting TTB.

With this background in mind we can now proceed to deal with the legal implications and complications arising out of the concept of begetting TTB in a modern welfare state with special reference to India.
NOTES AND REFERENCES (CHAPTER - 2, PART - II)

1. Warnock Report, P. 15