CHAPTER - 3, PART - II

LEGAL IMPLICATIONS OF TTB IN A MODERN WELFARE STATE
WITH SPECIAL REFERENCE TO INDIA : WHEN TTB IS THE
RESULT OF THIRD PARTY PARTICIPATION :

In this chapter we shall discuss the various problems inviting legal implications and complications of TTB under the situations and circumstances where husband or wife remained out of active participation for begetting TTB and where the TTB is an outcome of active participation of third party comprising of one or more members, under the following heads :-

1. The legal implications of TTB in the field of traditional heritage, Inheritance and Succession;

2. The legal implications of TTB in matrimonial ties;

3. The legal implications of TTB in the field of relationship for marriage, pindas and sapindas, customs, norms and rituals;

4. The legal implications of TTB in psychological, sociological and emotional ties;

5. The legal implications of TTB in socio-economic crimes or public welfare offences;

6. The legal implications of TTB in the field of religion;

7. The legal implications of TTB in respect of rights, duties and liabilities
of recipient parents, donors and surrogate mothers;

8. The legal implications relating to rights, claims and duties of TTB;

9. The legal implications of TTB relating to the rights and duties of physicians / doctors and their staffs;

10. The legal implications of TTB relating to ethics, morality, psychology and social impact;

11. The legal implications of TTB in respect of individual liberty and right to beget TTB by single person, male or female;

12. The legal implications of TTB having international dimensions; import and export, nationality, citizenship and domicile;

13. The legal implications of TTB in case of abortion or miscarriage of pregnancy undertaken by surrogate mothers;

14. The legal implications of TTB in health injuries, contractual breakdown and compensation to the victims;

15. The legal implications of TTB leading to multiplicity of litigations inter se the Recipient Parents, Donors, Surrogate Mothers, TTBs and Physicians / Doctors.

3.1 The legal implications of TTB in the field of traditional heritage, inheritance and succession :-

In general, every modern welfare state has a society comprising of individual
families, each of which is headed by the head of family. Traditionally in every family the line of heritage for the purpose of continuing the family generations and sharing the ancestral property by way of inheritance and succession or any other ways and means prevailing as per the old customs in the family or society is maintained. This line of heritage in a chain of patrimony (ancestral inheritance) is either from the patriarchal (father side) or the matriarchal (mother side) parentage. In India both the systems prevail in different parts of the country. In majority of the states in India, people follow the patriarchal line of heritage but in Meghalaya some people especially belonging to Khasi community follow the matriarchal line of heritage.

In case of patriarchal line of heritage the children are known by the name of their father and they carry the title, surname and gotra of their father. After the marriage, the females pick up the title, surname and gotra of her husband but till the time of marriage the females are known by the name of their father and carry on using the title, surname and gotra of their father. The female who remains spinster and unmarried continues to use the title, surname and gotra of her father but the divorcee female after the divorce abandons the title, surname and gotra of the husband and rebut back to the title, surname and gotra of her father. The widows continue to use the title, surname and gotra of her husband. The males whether bachelor or unmarried, widower or divorcee, continue to use the title, surname and gotra of their father throughout their life.

However in case of Matriarchal system of line of heritage, the things are just reverse, the children use the title, surname and gotra of their mother. The females whether spinsters or unmarried, divorcee or widow, continue to use the title, surname and gotra of their mother. Whereas the males follow the title, surname and gotra
of their mother till the time of their marriage and after the marriage the males change over to the title, surname and gotra of his wife. In case of divorce the male goes back to use the title, surname and gotra of his mother, but in case of widower he continues the title surname and gotra of his wife. However in case of bachelor or unmarried, he continues to use the title, surname and gotra of his mother.

This line of heritage and the relation, entitles the children to inherit and succeed the ancestral property to the extent of their share and further maintain the line of heritage.

In case of TTB obtained with the help of third party donor or donors, as per the existing trend of begetting TTB, their names are not disclosed and are kept secret. Therefore, where TTB is the outcome of one or more third party persons as active participants whose identity is not known or not disclosed, makes it an impossible task to search, locate or ascertain the biological origin of the TTB. In the absence of any law protecting the rights of TTB, any dispute or right for share in the ancestral property cannot be judiciously decided and enforced in favour of TTB if the recipient parents deny or refuse to give any share of their properties both self acquired and ancestral. In another situation, if the recipient parents die soon after begetting the TTB; the other close relatives and legal heirs recognised under the existing laws, may not recognise TTB and may not give the TTB the due share of property of deceased recipient parents. There will be a big legal tangle. The existing laws do not provide any remedy for this kind of legal tangles.

Further in case of such denial or on the refusal on the part of the recipient parents and after their death the denial or refusal by their other legal heirs; then whose title, surname and gotra the TTB would be entitled to use and establish his/
her identity in society. Which of the parents shall the TTB use name? Which ancestral or other property shall the TTB be entitled to inherit or succeed? Whose property shall the TTB be entitled to claim? What shall TTB do under such state of affairs? Where shall the TTB go? Who shall protect the interest of TTB? Should the recipient parents be compelled to look after the interest of such TTB and give their property to TTB; or should the donors of biological origins of TTB be compelled to secure the interest of such TTB or give their property to TTB or Should the burden of looking after such TTB go to Government? If it is decided to so compel the recipient parents, they might oppose and fight the legal battle by tooth and nails as there is no existing laws in India to enforce such compulsion on them. Other classes of legal heirs are also likely to jump into the fray of this legal battle as their legitimate rights and claims to ancestral property are duly protected under the laws for the time being in force in India, making the situation more complex and complicated. In case it is decided to compel the donors of biological origins of the TTB then in the absence of their whereabouts and any other records, how shall they be located and ascertained and how the decision be imposed upon them? Alternatively the burden goes to the Government but why should Government suffer for the acts of others? So the Tangle remains.

Likewise all the rights and claims of TTB in case of such denial and refusal which ought to be at par with the NBB in the field of line of heritage and ancestral property remain unenforceable in the absence of appropriate law securing the same. This position if created in case of majority of TTBs then what would be the position of society? Obviously like mess. This is the far reaching affect telling upon the health of the society and shaking the very basic fabric and foundation of the society. Should it be allowed to happen? Obviously it should not be allowed. Then what
is the remedy? The remedy is general awareness among the people and to bind the recipient parents; by suitable enactment, to accord due recognition and share in the property whether self acquired or ancestral.

3.2 The legal implications of the TTB in matrimonial ties :-

Matrimonial ties and healthy growth of a family depends upon amicable, cordial and harmonious matrimonial relations of husband and wife in any society. If the families in a society are having healthy growth, the society will automatically be healthy. However this harmonious atmosphere of family is not possible in all the family as the past experience in this field speaks about. In case of NBB itself there are legal fights even though there are good laws to protect the rights and claims of NBB. There are number of maintenance proceedings, custody matters, guardianship and the like. There are good number of divorce cases and matrimonial litigations in the Indian Courts. At Guwahati itself, the Family Court which is dealing only with matrimonial cases, is flooded with matrimonial litigations and over burdened. Many cases are pending for decision.

In case of TTB having no legal force as yet to enforce his or her rights and claims, the position can well be imagined finding no immediate solution. There is, at present, no case in India relating to the TTB, but the time is not very far off when the litigations shall start pouring in and the Courts in India will be flooded with cases relating to TTBs. Then complicated matters shall have to be decided, which will be difficult exercise in the absence of any enacted guidelines.

Initially the couple begetting TTB might be in good relations having profound respect, love and affection for each other. But after begetting the TTB if matrimonial
relations do not remain the same it shall pose serious problems and danger to the TTB and also to the persons begetting TTB.

During the period of normal and cordial relations, the spouses may consent to each other for begetting TTB and go ahead for the purpose of obtaining TTB even with the help of donor sperm or eggs. But subsequently, as we have seen in case of NBB the matrimonial relations do not remain the same and the spouses are heading for divorce or separation, legally or otherwise having reached the point of no return, forgetting about the NBB altogether, then what will be the fate of TTB? The spouse whose biological origin has not been used for producing TTB might come to stand and refuse to maintain or give any share of property to TTB. In case of Donor sperm, this possibility is on the higher side on the part of husband in India where the society is male dominated.

Similarly the possibilities of the female reacting indifferently in case her egg is not used for begetting TTB cannot be ruled out, especially when the TTB is obtained through surrogate mother with an egg of the surrogate mother or of another woman.

Whatever may be the reason, if the TTB is abandoned by the recipient parents and the donors of biological origin are not known. The question of maintenance of TTB will be a tangle requiring legal solution. But can it be possible in the absence of any law or enacted guidelines? Obviously, it is not possible. Nonetheless the TTB requires necessities of life to maintain himself or herself. This requirement of the TTB shall force him or her to go for child employment which is not so easy, because firstly it is prohibited in law and secondly no employer will prefer to employ the child without guardian and proper identity due to many factors; like fear of stealing
valuables and running away, the risk of his or her life and some unforeseen reasons. In the absence of any such employment, the TTB would be forced to go for begging or become some hard core criminal. In both cases the Government shall be burdened with additional problems of rehabilitating them and of maintaining law and order situation. Even the TTB may become emotional and revengeful and in that case TTB is likely to commit offences of serious nature in the society. Again Government shall be burdened to deal with uncalled for situation.

3.3 Legal implications of TTB in the field of prohibited relationship for marriage, pindas and sapindas, customs, norms and rituals:-

It is well known fact that marriage in every society has some prohibited relationship for solemnising marriage; for example, a man cannot marry his mother, daughter and sister; likewise a woman cannot marry her father, son and brother. Particularly in India, Hindus even cannot marry a person of his own gotras, pindas and sapindas and the marriage within the degrees of prohibited relationship renders the marriage invalid, void or voidable and decree of nullity can be passed putting an end to such marriage.

However for the TTB if the donor sperm, eggs and embryos are used without knowing the biological origin of the donor, which at present is not disclosed and is kept secret in the name of preserving confidential informations; and subsequently if it is found that the TTB is the product of donor within the degrees of prohibited relationship for marriage; then what shall be the fate of the TTB? Whether such TTB ought to be treated legitimate or illegitimate? Whether TTB shall under such circumstances be entitled to inherit or succeed the property of the recipient parents or the donors of sperm, egg and embryo or the surrogate mother? Whether the TTB
shall be entitled to enforce his or her claims? All these are moot questions conceived with the legal implications of TTB, for the satisfactory solution of which existing laws do not provide in India.

Pindas and Sapindas for Hindus are most important relations. Generally as per Hindu Customs and rituals the son being of the same gotra is only entitled to perform sharadha and offer water and 'pind' to his ancestors for the peace and happiness of the departed souls of the same gotras. But in case of TTB whose biological origin lies with the unknown donor or donors; it is not possible to trace out the gotra of the TTB for the above purpose. Thus the son as such TTB for the aforesaid purpose becomes unfit for want of certainty to his own gotra. Also the Hindus cannot marry if the gotras happened to be the same. But in case of TTB begotten with the help of donors of unknown identity the gotra cannot be ascertained. Therefore, particularly in India, it may even be difficult for a child with brand label of TTB to get marry with a person born naturally as NBB, for the NBB as counter part proposed for the marriage of TTB might refuse to marry with TTB in the absence of true biological origin of the donor or donors.

This problem is likely to arise in typical Indian Hindu family where the marriage is arranged after confirming the title and gotras of both sides, not only of the proposed bride and bridegroom but also their parents and grand parents. Likewise if the TTBs are not accepted by the NBBs for the purpose of their marriage with TTB they shall be compelled to search match for marriage with in the TTBs. Therefore, the society will be divided into two groups of peoples.

-- The TTB Group;

-- The NBB Group.
In view of the above discussion the marriage of TTB with the NBB would pave ways for corruption and social evils like dowry and exploitation. The concept of Pindas and Sapindas shall further complicate the issue of such marriage. The customary rights and rituals shall stand like stumbling block in the way of establishing the marriage between these two groups. These situations shall further give rise to the internal rivalries between these two groups of the society implicating the innocent people and leading to unrest and disturbance in the society. This would cause additional burden on the Government to deal with. Being so, the TTB is likely to be looked down upon and discarded.

Further if the donor system for TTB is allowed to prevail in India, there is a possibility of insemination of sperm of father, brother or son for fertilizing egg of daughter, sister or mother for begetting TTB. This would invite legal implications of serious nature. Under the circumstances the TTB infact shall be in clear violation of the doctrine of prohibited relationship for marriage. Then whether such TTB be legitimate or illegitimate child?

Further, the family customs, norms and rituals shall be badly affected owing to TTB obtained with the help of unknown donor or donors where in a family as per customs and norms the property of the ancestrals devolves upon their heirs in a particular manner. The legal implication of TTB shall complicate the issue.

FOR EXAMPLE:

In KHASI community in Meghalaya there is a prevailing custom that the youngest daughter known as queen in the family shall only be entitled to get and retain the house of her mother and the other daughters if any after marriage shall
have to shift to some other house either self acquired or provided by the mother. But in case where a female child as TTB is the product of donor sperm, eggs and embryos without any active participation of the recipient spouses; whether such female TTB is entitled and able to claim and enforce the aforesaid custom and get the house of recipient mother if the recipient mother denies or refuses, and after her death if the other legal heirs deny or refuse, is again a moot question having legal implications for which existing set of laws does not provide any remedy.

Thus the legal implications of TTB have the tendency to intrude, and affect the old age customs, norms and rituals prevailing in the family.

3.4 Legal implications of TTB in psychological, sociological and emotional ties:

The activities of an individual is governed by his or her own thoughts, feelings, likings, nature and attitude. All these factors depend upon the individual mind and are psychological factors. The behaviour, conduct actions and reactions of the individual are regulated by the psychological factors. The individual being a member of a particular society the psychological factors play an important role in the life of the individual for his or her behaviour and conduct in the society. This projection or presentation of individual behaviour in the society influences the psychological factors of other members of the society. The emotional acts of an individual are the result of mental attachment of the individual in respect of a particular thing with the degree of importance which the individual attaches to it. Every action and reaction of individual has its own impact in the minds of other members of the society. Sociological relations of the individuals in a particular society are thus inter-related with the individual psychological and emotional factors.
Therefore, psychological, sociological and emotional ties are the pillars of social structure in any society. As strong the pillars so strong the society. The strength of these pillars lies in the stable and firm *inter-se* relations of the individuals of the society. Therefore, the whole structure of any society depends upon the state of relations of the individuals with other individuals in a society. Stable, firm and harmonious relations of the individuals help growing the stable, firm and harmonious society.

In case of NBB, these individual relations are generally strong, stable, firm and harmonious, nonetheless we find number of litigations arising out of those relations.

In case of TTB, however, individual relations cannot be expected to be so strong in comparison to NBB especially when third party involvement is in the picture. The psychological and emotional ties of relations of recipient parents with TTB and vice versa are likely to be shaken if after begetting TTB the matrimonial relations between the spouses do not remain as cordial as before going for TTB. Apart from that, in Indian society the TTB is likely to be looked down upon. The TTB with the help of surrogate mother or donors whether of eggs or embryos, or the sperm, in Indian society may not be so welcomed as in the other countries. The psychology of Indian society cannot be compared with that of the societies of the other countries of the world. The TTB of this kind shall hardly be a welcome guest in the Indian society. Now we can just imagine the situation where TTB is viewed with ridiculous and contemptuous looks. Will it be possible for TTB to remain normal while facing this state of affairs around him or her?

The relations between the recipient parents and TTB shall not be free from
psychological problems. Even if where third party is not involved but the woman begets the TTB with the sperm of her husband after his death, the relation between mother and the child may not be normal. In this regard even Warnock Report says, "Nevertheless we have grave misgivings about AIH in one type of situation. A man who has placed semen in a semen bank may die and his widow may then seek to be inseminated. This may give rise to profound psychological problems for the child and the mother."6

There may still be a difficult situation where after understanding the affairs under which his or her birth was achieved, the TTB develops the emotional touch to meet the persons of his or her biological origin. Sometimes the impact of such emotional feelings may adversely affect the mind of the TTB rendering him or her completely shaken and with mind of unsound faculty. There may be situations and cases of depression where the TTB is subjected to face humiliation of his or her existence in this world in the state of affairs under which his or her birth has been procured. The TTB might hate the system altogether facing all the stress, strain and pain of becoming a TTB if a well secured respectable place and status is not accorded to TTB which in Indian society is not an easy affair. Emotionally moved as such TTB itself may become revengeful and cause danger to the lives of the persons begetting and other members of the society treating him or her with dubious and contemptuous conduct. Such incidents shall have the tendency to create unrest and law and order situation posing problem for Government.

3.5 Legal implications of TTB in socio-economic crimes :-

Legal implications of TTB in Socio-economic crimes or public welfare offences arising out of the affairs of TTB shall be of serious nature and extremely
difficult to tackle.

Regarding problems of Donor Insemination, Leon Speroff, Robert H. Glass and Nathan G, Kase, state, "Among the problems that can occur with donor insemination are the transmission of venereal disease from donor to recipient. Periodic testing of donors for gonorrhea, syphilis, herpes, Chlamydia, and Mycoplasma is important".7

Apart from the general problem of third party involvement as Donor Insemination there are other socio-economic problems as follows herein below.

The lust and craze for TTB has a wide scope of exchanging, manipulating and tampering, defacing and forgering records, stealing and smuggling the sperm, eggs and embryos whether frozen or otherwise as well as exploiting the poor and innocent ladies for surrogacy arrangement; altogether unaware of the far reaching affects, the woman might agree for becoming surrogate mother or for donating eggs and embryos for begetting TTB. Chances and possibilities of bribery in such cases are very high.

The poverty as a curse is well known in Indian society. The poor ladies and gents struggling hard for making their both ends meet can easily be influenced, exploited and lured to act as surrogate mothers and donors of their own eggs and embryos, as well as the gents for donation of their sperm on payment of meagre amounts and converting the same in huge profit by supplying the same at exorbitant price to the needy couples in India or abroad by some people having vested interest to earn profit or to take revenge.
The deliberate abortion and miscarriage of pregnancy for TTB by the surrogate mother by herself or under the influence of other interested people or facing threat to her health shall absolutely be a new concept in the field of socio-economic crimes.

Further the deliberate manipulation of mixing, exchanging or destroying the sperm, eggs and embryos either with a view to tarnish the image or reputation of the donors; or causing harm to the recipient parents and the TTB by the interested people; either in order to take revenge or in return of huge amount which tentamounts to bribery. There may also be cases of deliberately or negligently causing infection of sexually transmitted diseases like AIDS, to the TTB for obvious reasons of making easy money. These incidents of offences shall give rise to other problem of deciding compensation for damage, loss etc. to the victims.

The possibilities of committing these offences surreptitiously without knowledge or notice of others, shall facilitate the wrong doer to go scot free as it will be difficult to trace out, locate and ascertain the culprits. Therefore, these offences shall have serious impact in the society going to the extent of shattering the whole basic structure or social set up in India.

3.6 Legal implications of TTB in the field of religion :-

Undoubtedly the faith of an individual plays significant role in moulding and regulating the conduct and activities of the individual in any society. A group of individuals having common faith are likely to join and share the similarities of their commonly regulated behaviour in a society. The common faith is generally achieved by the people through religion they preach, the basic principles and beliefs of which are the pillars of their faith. Every individual in a group endeavours his best to
protest and secure the principles and beliefs of his religion. The head priest of the religion is considered the supreme authority in the matters of religion and is obeyed by all the persons of that religion. Any development in the society affecting the principles and beliefs of their religion is generally viewed very seriously by all.

The TTB, as a recent development in the society of modern welfare state has not been wholeheartedly favoured and fully welcomed by all the religions. There has been strong objections especially to the method of begetting TTB with Artificial Insemination Donor (AID).

While dealing with the 'religious aspects' of AID and duty of a physician to his patients, S.J. Behrman, Robert W. Kistner and Grant W. Patton state, "It is a physician's duty to inform his patients about the position some religious groups (e.g. Roman Catholic) have taken against AID, and even against AIH and masturbation. If the patients have any doubts about the rightness of their choice, they must be advised to discuss the problem with their minister or priest". Further referring from 'Kelly G. Teachings of Pope Pins XII on artificial insemination. Linacre Q 23:5, 1956' they quote, "As a rule, the Roman Catholics, the Orthodox Jewish, the Lutherans, and the Muslims are theoretically against AID;" and further state, "the Protestant churches generally have a more moderate teaching. Religion may also exert an influence on the medical teams, and they must remain free to act according to the rules of their faith and to refuse to participate in AID or AIH programs. But, in our opinion, it is quite normal that they discuss the facts with their patients and do not refrain from giving them full information."8

While discussing about attitude of AID, of the people in United Kingdom, Warnock Report states, "The first formal public comment on AID in this country
came with the publication of the Archbishop of Canterbury's report on artificial insemination in 1948. The Archbishop himself was highly critical of the practice of AID, though not of AIM, recommending that it should be made a criminal offence. However no action was taken in this direction. In 1960 the Feversham Committee, set up by the Government to consider AI, reported; it considered that AIM was an acceptable form of treatment for some couples, but believed that the majority within both society and the medical profession was opposed to the practice of AID. It concluded that AID was an undesirable practice, strongly to be discouraged. Since 1960 the practice of AID has continued to grow. In 1968, the then Minister for Health decided that AIH and AID should be available within the NHS if recommended on medical grounds. The increase in requests for information about AID and where it was provided led the British Medical Association to set up a panel in 1971 under the chairmanship of Sir John Peel to look into the medical aspects of human artificial insemination. This panel reported in 1973 and recommended that, for the small proportion of couples for whom AID would be appropriate, the practice should be available within the NHS at accredited centres. No action was taken to establish a system of accreditation”.9

"Religion also poses a problem. Religious sanction about artificial insemination in Hinduism has been debated and written about as far back as the Vedic period. In his Manavadharmashastra Manu discussed the question of the ownership of the child in great detail. Says he, "In the very same way, men who have no field but sow their seed in other men's fields are acting for the benefit of the men who own the field, and the man whose seed it is does not get the fruit". He continues, "But if this (field) is given over for seeding by means of an agreed contract, then in this case both the owner of the seed and the owner of the field are regarded as (equal)
(135)

shares of that crop". (Chapter 9 Law 51 and 53). But manu's somewhat obscure commentary in no way settles the issue.

The Catholic Church however is very clear about the issue. It is opposed to masturbation under any circumstances, therefore, DI is prohibited. Catholic couples who wish to use DI however tend to ignore this prohibition against masturbation for the same reason that many Catholic laypersons disregard the Church's ban on the use of contraceptives.

Like Christianity, Islam too prohibits DI and most of its adherents seem to think that the prohibition is justified. But more than religion it is society's reaction which will encourage or discourage DI and its open use".10

From the above, it is crystal clear that the practice of obtaining TTB by AID (Artificial Insemination Donor) has been objected to, from time to time, by the various religious groups. Nonetheless, the use of the system of begetting TTB with the help of donor sperm has gradually been increasing and now in many of the countries the system of begetting TTB with the help of AID is going on in full swing.

However, in India the practice of begetting TTB with donor sperm is very limited in comparison to the other countries and is preferably confined to the donation of sperm from the near blood relation, say brothers and cousins, but this practice is also not free from the problems especially relating to individual, psychology, emotions and its social impact. It is not likely to get more favour in view of the fact that in India, the main communities are Hindus, Muslims and Christians. Hindu Laws for the time being in force are applicable to a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the
Brahmo, Prarthana or Arya Samaj; to any person who is a Buddhist, Jain or Sikh by religion, and to any other person domiciled in Indian territories to which Hindu laws extend, who is not a Muslim, Christian, Parsi or Jew by religion and including a legitimate and an illegitimate child. The Hindu view of performing rituals and offering water, pindas and shradhas to their ancestors for their peace and happiness by only the son naturally born or adopted one, contributes to discourage the system of begetting TTB by the donor sperm without knowing the identity of the donors. The Muslims have never recognized the adoption so they are not in favour of begetting TTB with donor system. Among the Christians, catholic group is also not in favour of this system of begetting TTB. The majority of all the religion also express their views that the system being deviation from the natural way of getting a child and thus being against the will and wish of God, amounts to sin.

In spite of the above religious restrain, the mode of begetting TTB by the donor system is gradually increasing in India as the infertile couples are extra ordinary keen to beget a child irrespective of any consequences. The increase in TTBs in India by this method would pave ways for the possibilities of conflicts between the infertile couples and others on religious differences. Therefore, again the social structure in India would be at stake.

Under the circumstances, the status of TTB thus begotten with the help of donor semen, shall also be badly affected and the TTB; who is denied the care and protection, maintenance and share in property due to the indifferent attitude of the recipient parents, their relatives and other classes of legal heirs; shall have to fight the legal battle for the same. The possibilities of the quarrels, disputes and fights arising out of the above circumstances leading to breach of peace disturbance or affray can also not be ruled out.
In short the legal implications of TTB in the field of religion have the tendency to promote disturbance in the social structure and litigations inter-se the parties seeking TTB; i.e. the recipient parents, donors, surrogate mothers and the TTB itself.

3.7 The legal implications of TTB relating to right and liabilities of recipient parents, donors and surrogate mothers :

In the whole process of begetting TTB the most important thing to consider is "right to have a child" and pertinent question that raises eyebrows of every prudent person is, "who has the right to beget a TTB"? The answer to which is not that simple as it may so appear at the first glance for want of manifold considerations, the significant of which being the judicial consideration. It turns to be more complex, complicated and difficult one of answer, if it sounds to seek, "who should have the right to beget TTB?" Let us analyse and consider some of those complex situations which are likely to go ahead for the legal implications.

But before going to analyse and consider those situations, it is pertinent to analyse first as to what right the married couple has to beget NBB? In case of NBB, it is well settled principle having social recognition and legal sanction that every married couple has the right to beget a child. This right of every married couple to have a child, implies and includes right to get pregnancy and become parents. Naturally speaking any fertile person has natural right to produce and have a child like any other creature of this universe. However while living in a civilized society of any welfare state, producing and begetting a child without observing and complying with the social norms, customs, obligations, bindings, and ties is not recognised as legitimate child. But the child born within the bounds of social ties is duly recognised
and welcomed. One of the oldest, prominent and commonly approved, acknowledged and recognised social ties is lawful marriage wherein the married couples enter into matrimonial ties which are part and parcel of the social ties. The matrimonial ties provide legal platform for the couples to start a family, build a home and strengthen a society around them.

However this right to become parents or right of the parents to reproduce is subject to other considerations under various circumstances; the most significant and relevant are :-

(a) In a case where the couples are facing so financial hardships and are unable even to make their both ends meet; then how can they feed, look after, nurture and nourish the child? Would not the children under such circumstances be burden on the society and the Government itself? Therefore the pertinent moot question to consider is :-

Do couples have the right to have children to whom they cannot offer an adequate upbringing? or Should the couple having no capacity to rear a child be allowed to beget a child?

Legally, the right and duties are correlated. The enforcement of one's right entails one's duty to protect right of others. In this case the right of the couple to beget a child embodies their duty to rear and nourish the child. If the couple is unable to perform their duty and bear the liability of feeding and looking after the child, then they have no right to beget a child. So they should not be allowed to produce the child. However if they still go ahead to beget a child then the life of the child will be miserable and if the numbers of such children are considerably increased
in the society, the social harmony shall be affected.

(b) In case where couples are extremely well to do and can afford to maintain any numbers of children then the relevant moot questions are:

*Do couples have the right to have as many children as they wish even if in this way they will reduce the amount of food available to other families? Should there not be any limit to beget children in view of population problems? Do couples have the right to have children coupled with responsibility not to have more children than a community?*

Even if the couples are capable of producing and rearing as many children as they wish, still there should be some limit beyond which they should not be allowed to produce more children in view of many other considerations, the significant of which is that such increasing children would reduce the quantity of food which could be made available to other families. Also it would create the population problem.

From the above discussion, it is seen that the lawful marriage confers a right upon the married couple to become parents and have a child out of their wedlock. In every welfare state, there are some requisite conditions for the lawful marriage. In India we find these conditions in the matrimonial laws of the parties and the common condition in all the personal laws is that the age of the bride should not be less than 18 (eighteen) years and that of the bridegroom should not be less than 21 (twenty-one) years.

Now coming back to enquire, "who has the right to beget TTB"? *Who is entitled to beget a TTB? And who should have the right to beget TTB"? The answer
is quite obvious, that is to say, any couple lawfully married but being infertile or otherwise unable to achieve pregnancy by natural means of coitus and thus could not beget a child, has right to beget a TTB if so desired by such couple. But there being various modes and methods of begetting TTB, the next relevant question is:-

By what mode or method is the couple entitled to beget a TTB in India? The prudent answer would suggest; by the mode or method free from social and legal complications and implications. This is possible only when the parties involved to beget TTB is only the couple desiring for TTB without involving any third party.

But in case of total infertility, the couple desiring TTB can only get with the help of third party person or persons in the form of sperm donors, eggs and embryo donors and surrogate mothers. This practice of begetting TTB with the help of third party persons is going on in full swing in many of the countries of the world and gradually being followed in India also. In some countries this "right to beget TTB" has duly been conferred upon the infertile couples under the provisions of enacted laws covering various aspects of TTB in their society. However in India there is no such law relating to TTB in any form and shape at present. Thus the people of India though begetting TTB, have no social and legal sanction at present to beget TTB due to which lot of legal implications and complications are likely to come up, especially, when the TTB is achieved with the help of third party comprising of sperm donor or egg or embryo donor or with the help of surrogate mother and the names of the donors are kept secret.

When the TTB is obtained as such with the help of involving third party, the following questions relating to the rights of the parties involved in begetting
TTB are pertinent and relevant:

1. *Do the donors of sperm, eggs and embryos have the right to know* where their biological origins are going or have gone; and that who is the product of their biological origin? In other words, "Do the Donors have the right to know the recipient parents and the TTB?"

2. *Do the recipient parents have right to know the biological origin of the TTB they are going to beget?*

3. *Should the Donors of sperm, eggs and embryos be entitled to know the recipient parents and the TTB?*

4. *Should the recipient parents be entitled to know the biological origin of the TTB they are going to beget?*

As far as question No. 1 is concerned, it is well known fact that every person has natural right to live. This right to live in India has duly been conferred upon the Indian citizens by the Constitution of India as one of the fundamental rights. This right to live embodies right to procreate and become parents. In U.S.A., while defining the fundamental right to procreate; the First judicial articulation of constitutional 'right to have offspring' has been pronounced in Skinner - vs - Oklahoma, 316 U.S. 535(1942). Right to procreate further embodies right over the body and any part thereof including the procreative biological origins. Therefore a person has right to utilise and regulate the utility of his or her procreative biological origins in any manner he or she may desire. This right of utilising and regulating the generating biological origins includes right to know the manner in which the generating biological origins of any person is utilised. Therefore, every donor has
natural and fundamental right to know about the utility of his or her reproductive biological origin.

There may be another situation where in a case the TTB is abandoned by the recipient parents due to any reason whatsoever after procuring the TTB with the help of donors. Thus abandoned, the TTB shall be in urgent and immediate need of care, protection and bare necessities essentially required to live and maintain his or her life. Under the circumstances the donor may come up as an instant resort for the TTB procured by his or her procreative biological origin and provide financial help or to otherwise accept and take the TTB with him or her and nourish the TTB as natural guardian. Thus the Donor may provide all requisite care for the upbringing the TTB in question. In this view of the matter also it is desirable that the donors have the right to know about the utility of their reproductive biological origins. Thus the donors do have the right to know who are the recipient parents, what is their status, whether they are able to bring-up the TTB in a proper manner; who is the TTB produced by using their procreative biological origins, how the TTB is being brought up and in case the recipient parents neglect the TTB, the Donors can force them to take care of the TTB as they have the right to do so.

In the above situation, the TTB being so neglected and abandoned may also seek help from the Donors as the TTB is the product of their biological origin. In case the donors, the recipient parents and the TTB do not know each other then the above mutual help is not possible.

Likewise the recipient parents also have got the right to know the reproductive biological origin of the TTB they are going to beget and it is equally important for them to know the status of the donors, their physical and mental conditions so as
to choose the donor if possible to suit their requirements. It is also important for the recipient parents to ensure and see that the TTB they are going to beget is the product of the biological origin free from all sexually transmitted and genetic diseases and not to get into the liability to look after an ailing, infirm, defective or unsound TTB.

Questions No. 3 and 4 of course are moot questions involving some other factors essentially required for the harmonious matrimonial relations. Most significant of these are the psychological and emotional factors. As it is seen while discussing these factors hereinabove that these factors play important role to regulate the individual behaviour and mould the shape of society so it is desirable that they (all the parties; the recipient parents, the donors and the TTB) are not allowed to establish relation or attachment with the biological origin of the TTB, this approach finds support from the following views:

"The protection of the donor should include that his semen may not be used without his actual consent, that his identity must be kept secret in all circumstances, and that no legal relationship may be established between himself and the child.

The consent to AID must be explicit for husband and wife. The secrecy of identity of all persons concerned and of the AID procedure must be strictly guaranteed."\(^{15}\)

"The secrecy of semen donation must be strictly protected. The donor is not informed of the insemination results with his sperm other than being told at annual intervals that pregnancies have occurred. Patients are never told of the donor's identity, so that a relationship can never be established between the AID child and
his or her genetic father".\textsuperscript{16}

While considering the question of anonymity the Warnock Report says, "In all cases, the question is whether it is better that a third party who helps a couple to overcome their infertility should be known to the couple or that the third party should remain anonymous. On rare occasion a brother or a sister may be the most appropriate person to give help, but our general view is that anonymity protects all parties not only from legal complications but also from emotional difficulties. We recommend that as a matter of good practice any third party donating gametes for infertility treatment should be unknown to the couple before, during and after the treatment, and equally the third party should not know the identity of the couple being helped"\textsuperscript{17}

But while dealing with the problems arising out of AID the Warnock Report says, "As a matter of principle we do not wish to encourage the possibility of prospective parents seeking donors with specific characteristics by the use of whose semen they hope to give birth to a particular type of child. We do not therefore want detailed descriptions of donors to be used as a basis for choice, but we believe that the couple should be given sufficient relevant information for their reassurance. This should include some basic facts about the donor, such as his ethnic group and his genetic health. A small minority of the Inquiry, while supporting the principle set out above, and without compromising the principle of anonymity, consider that a gradual move towards making more detailed descriptions of the donor available to prospective parents, if requested, could be beneficial to the practice of AID, provided this was accompanied by appropriate counselling. We recommend that on reaching the age of eighteen the child should have access to the basic information about the donor's ethnic origin and genetic health and that legislation be enacted
to provide the right of access to this".18

In India whether procreation of TTB with the help of third party especially
by the mode of AID will be wholeheartedly accepted and encouraged or not is
premature to conclude at this stage of development of the TTB, but considering
the typical nature of male dominated society in India there is an ample scope of
apprehended danger of matrimonial relations being invaded with the implications
of complicated legal tangles and of social structure being badly affected.

In the absence of any law governing the relations of the parties procuring
the TTB in India, the rights, duties and liabilities of the parties shall heavily depend
upon their *inter-se* arrangements and agreements with stipulated terms and conditions.
Any infringement, violation or non compliance of the terms and conditions of such
arrangements and agreements shall seriously affect the rights, duties and liabilities
of the parties seeking to procreate TTB. This will invite the situations impregnated
with the complicated legal tangles demanding judicial considerations.

Some of the apprehended serious and complex situations and incidents
leading to legal implications can thus be discussed as follows :

(a) Where the couple being totally infertile and incapable of procreating NBB
beget TTB with the help of third party donor or donors of sperm, eggs and embryo:-

Supposing in a case where the recipients parents, 'A & B' 'husband & wife'
being totally infertile and incapable of procreating NBB; arrange for the D.I. of
donor sperm of 'X' with the donor egg of 'Y' and pregnancy is sought to be achieved
through surrogate mother 'S'; under the arrangement that after bearing the pregnancy
to its term the surrogate mother 'S' is required and expected to hand over the TTB to the recipient parents 'A & B'. Now this requirement and expectation of handing over the TTB by 'S' to 'A & B' is subjected to many other possibilities and probabilities beyond the control of the recipient parents 'A & B'. One highly probable and serious possibility is the emotional attachment of the surrogate mother 'S' to the fetus and subsequent love and affection to the TTB which is likely to tempt the surrogate mother 'S' to refuse to part with the TTB.

Swayed over by such emotional attachment if the surrogate mother 'S' refuses to hand over the TTB to the recipient parents; Then the relevant issues requiring judicial consideration would come up as follows :-

- **Whether the surrogate mother 'S' has the right to retain the TTB?**

- **Whether the recipient parents 'A & B' have legally enforceable right to get the TTB from the surrogate mother 'S'?**

While considering the first issue, in the absence of any law, or contractual bindings between the surrogate mother 'S' and the recipient parents 'A & B'; 'S' cannot be legally forced to handover the TTB to 'A & B' and her act of retaining TTB and refusing to handover to 'A & B' cannot be held to be illegal; which simply means that her said act is legal and that she has right to retain the custody of TTB. Obviously then 'A & B' have no legal right or remedy to enforce the return of the TTB from 'S'.

However if the evidence reveals that specific agreement between the surrogate mother 'S' and recipients parents 'A & B' does exist binding 'S' to return TTB to 'A & B' on fulfilling certain condition of payment to 'S' by 'A & B' for rendering
her services as surrogate mother or otherwise and the condition stands fulfilled or 'A & B' are ready and willing to fulfil such condition; then 'S' shall be bound to perform her part of specific performance and she is liable to hand over the TTB to 'A & B' if the condition stands fulfilled and if not yet so fulfilled then on fulfilling such condition by 'A & B'. Thus the surrogate mother 'S' then has no right to retain the TTB and the recipient parents 'A & B' have legal right to enforce the return of TTB from 'S' and get the TTB back in the eye of law.

But in the above situation if the very validity of the arrangement and the understanding or the agreement is under challenge on the ground of having the same obtained by fraud, duress or coercion or any other ground for declaring the same as voidable or unenforceable, then the consideration of the validity of the very agreement for the deal in question shall first have to be decided, and the relevant issue to decide shall be:

- Whether the agreement/arrangement/understanding to beget the TTB by the recipient parents 'A & B' through the surrogate mother 'S' is valid or not?

Again, this issue has manifold implications in judicial consideration; for example, if there is no enactment to guide or provide for the solution to the problem in hand; then the matter under due consideration before the judiciary shall be guided and decided on the basis of the principles of prudence taking into consideration of existing social norms, practice and customs in the society or community of the parties coupled with the principles of logic, morality, equity and good conscience.

Proceeding thus if evidence on record reveals that the agreement / arrangement
(148)

/ understanding in question is valid, legal and enforceable in law; then the TTB shall go to the recipient parents 'A & B'. On the other hand, if it reveals that the same has been obtained by fraud, duress, coercion or any other ground whatsoever rendering the agreement / arrangement / understanding void ab-initio or otherwise invalid or illegal and unenforceable in law; then the TTB shall go to surrogate mother 'S' and recipient parents 'A & B' shall loose the legal battle.

However in clear-cut provision of law the issues shall be decided in accordance with that law. But in India as there is no law as such, the issue are to be decided in the manner stated above.

(b) Glaring example of custody battle in USA: The recent "Baby M Case": in the matter of Baby M 537 A. 2d 1227 (N.J.1988). 19 :-

In the year 1988, there has been a case in U.S.A on the same situation as discussed just hereinabove, where the surrogate mother 'S' successfully delivered TTB under the arrangement but refused to part with the TTB and did not handover the TTB to the biological father. This case came to be prominently known as Baby M case in U.S.A. This legal tangle arising out of the surrogacy arrangement to procure a child changed the whole situation. "One of the issue, brought into public awareness by the Baby M case, where the surrogate mother refused to give up the baby to the biological father, has been the nature of the attachment of the surrogate mother to the fetus". 20 "The recent Baby M case in the United States has raised numerous legal concerns causing many legislative bodies to consider possible statutes to regulate or prohibit surrogacy. The competing interest among and between the individuals involved in this relationship (i.e., the surrogate mother, the couple, the baby) to benefits". 21
(c) Typical legal tangle when married surrogate mother goes for coitus with her husband on the day of insemination:

A typical problem is likely to arise when the surrogate mother arranged by the recipient parents is also a married lady cohabitating with her husband. Now suppose a surrogate mother 'S' has been arranged by the recipient parents 'A & B' (husband and wife) who is living with her husband 'H' and inseminated with the sperm of 'A' as 'B' — the wife of 'A' is incapable of bearing a child due to some defect in her womb/uterus on a particular day, also goes for coitus with her husband on the same day. In the consequences of which the TTB born is abnormal, defective, blind etc. After knowing this fact 'A' refuses to accept the TTB on the ground that the TTB in question cannot be the outcome of his sperm whereas 'S' insists 'A & B' to take the child and pay the balance of money agreed by them to be paid for rendering them services of surrogate mother. How to decide the issue?

In the above situation the main issue to decide is: Whether TTB is the outcome of the sperm of 'A'? To decide this issue then the agreement arrived at by the parties may not be of any help because this issue can only be decided with the help of appropriate medical test in order to find out the parentage of the TTB. If the medical opinion says that the TTB is the product of sperm of 'A' then 'A' is bound to accept the child with all liabilities whatsoever in terms of the agreement arrived at between the recipient parents 'A & B' and the surrogate mother 'S'. However if the medical opinion reveals that the TTB is not the product of 'A' s sperm, then surrogate mother 'S' shall have to take the child with all liabilities whatsoever.
In USA recent case on the same point: Refusal to accept TTB by the parties: Matter decided by court on medical test:

Recently there was a case in *Michigan City of USA* where one Mr. Alexander Melhop, whose wife had defective womb/uterus, hired one Mrs. Judi Sweter for 10,000 Dollars which was mutually settled between them. The sperm of Mr. Alexander Melhop were artificially inseminated directly in to the uterus of Mrs. Judi Sweter who delivered a child after the due time of delivery. However surprisingly the child born was suffering from *microcyphillie* that is with small head normally a sign of unsoundness of mind in a child. When Judi Sweter gave this child to Mr. Alexander Melhop he refused to accept the child by saying that the child of this abnormal disease can never be of his sperm and demanded his money back. Not only this but also Mr. Alexander Melhop sued the lady Mrs. Judi Sweter for recovery of money already paid to her. The Court having confronted with abnormal situation called for medical report which revealed that the TTB in question was not the product of semen of Mr. Alexander Melhop but instead the TTB was the product of the sperm of the husband of Mrs. Judi Sweter who subsequently conceded and confirmed that on the day of artificial insemination of the sperm of Mr. Alexander Melhop in her uterus she had also gone for coitus with her husband owing to which the child came up with the disease of *microcyphillie* and she was also kind enough to return the money to Mr. Alexander Melhop which was paid by him to her at the time of arranging for surrogate mother.

(d) Mothers fighting for custody of TTB:

Now let us suppose a situation where 'A and B' the recipient parents arranged surrogate mother 'S' for bearing pregnancy and delivering the child to them. However
'A and B' obtained egg from another woman 'M' and the egg donated by 'M' is fertilized with the sperm of 'X' an unknown donor of sperm in vitro and Embryo is obtained with the help of another woman 'N' and finally embryo is transferred to the womb of surrogate mother 'S'. In this case 'X' is the sperm donor but unknown, 'A and B' are the husband and wife, desiring the TTB and recipient parents, 'S' is the surrogate mother, 'M' is the lady who donated the egg and 'N' is the lady who helped for growing fertilized egg into the embryo. Total four known women 'B', 'M', 'N' and 'S'; one known man 'A' and one unknown man 'X' in this case are involved, that is to say total 6 (six) persons are involved in procuring this TTB. Now imagine what would happen if all the women demand the child for their own psychological and emotional attachments to the egg, embryo and fetus or other personal reasons of having contributed their biological origins for procreating the TTB. If all the women so demand, then how to decide the issue? Is not it so strange and difficult task?

A case from California on the similar point:

On the similar point there was a case in California where 3 (three) parents involved in producing TTB came up for claiming the baby, each of them trying best to get the baby. The matter came up in the court. Law did not provide anything for such eventualities. The Hon'ble Judge with full of his Wisdom and judicious capabilities decided the issue by saying, 'Baby is one mum too many' as reported in People Weekly 34:143-4 on November 5, 1990 in U.S.A. in these words, "A judge ends a wrenching surrogacy dispute, ruling that three parents for one, baby is one mom too many".23
(e) Legal tangle when any couple having their embryo frozen suddenly die without any instructions for its disposal:

In a situation where the couple having frozen their embryo for future use suddenly die in an accident or otherwise without imparting any instruction for its disposal then how to dispose of the embryo in question becomes a legal tangle of serious concern. The frozen embryo being part and parcel of the deceased couple cannot be disposed off without their permission or consent. Under the facts and circumstances as such, the requisite permission or consent of the couple is not possible. Therefore, it becomes a complicated issue.

Similar case came up in Australia:

In the year 1984 a case of similar nature came up in Australia where an American couple got frozen their embryo in one hospital for future use but they suddenly died in an air crash, which landed the Australian physician in the midst of legal implications and complications as to how should they dispose off the embryo in the absence of any instruction from the couple for its disposal. The law then prevailing in Australia provided that the embryo was that part of the bodies of the couple which like any such other parts of the body could not be given to anyone else without the permission of the couple. Therefore in order to solve this legal tangle a conference of legal experts of Australian law was called for, which after considering various aspects of the matter ordered to destroy the embryo in question. Besetting with such critical legal problems, Australian Government decided to ban the system of procreating TTB but on plea of the physicians that it is the mode of providing relief to the infertile, the idea of banning production of TTB was abandoned.
Thus it is seen that the rights and liabilities of the parties procreating TTB are affected if any one of them backs out the arrangement and does not fulfil his or her part of duty. It becomes difficult to provide judicial remedy in the absence of specific provision of law.

The liabilities of the parties procuring TTB are required to be borne by each party to the extent of their involvement in the process of begetting TTB. Thus the donors of sperm, eggs and embryos after donating are liable to relinquish their rights over the donated sperm, eggs and embryos; the surrogate mothers are liable to bear the pregnancy to the term and handover the TTB to the recipient parents after the delivery and the recipient parents are liable to take the TTB and provide proper care, protection, nourishment and maintenance to the TTB. Any deviation by any of the parties would lead to legal implications and complications.

Therefore every person involved in begetting TTB has got the rights and liabilities which they must perform in order to provide healthy atmosphere in the society by ensuring and securing the interest and status of the TTB in a modern welfare state equivalent to that of the status of NBB. This requirement is most important in case of India where at present there is no law relating to TTB. Because even the countries like U.K., U.S.A., Australia, Netherland and others where there are enactments relating to various aspects of TTB are not free from legal tangles arising out of the dealings and process of begetting TTB, which is clear from various informations reported in Readers' Guide to Periodic Literature from 1989 to 1991.25

(f) Surrogacy and the legal tangle to solve: Is surrogate mother a mother?

In the whole gamut of surrogacy where surrogate mother refuses to part with
the TTB, the relevant issue for judicial consideration arises to decide: *Is surrogate mother a mother?*

"It is all in the (parental) genes (California Court rules that surrogacy is not motherhood; C. & M. Calvert - vs - A Johnson) S. Tiffl. it pors, Time 136 : 77 N S 90."26

From the above decision of the Hon'ble California Court, it is clear that the decision is based on the *parental genes*. It is also clear that the egg of the surrogate mother in this case has not been utilized for the procreation of TTB and that the fertilization is achieved from the egg of some other woman or the embryo is obtained by *In Vitro* fertilization by using the egg of recipient mother or some other female with the sperm of her husband or some donor and then the embryo has been transferred in the womb of the surrogate mother. The role of surrogate mother is from the stage of implantation of the embryo in her uterus till delivery of the TTB.

This decision becomes inapplicable in case; where the egg of the surrogate mother is used for procreating TTB; because in that case the surrogate mother falls under the category of "parental genes" which has been the basis of the decision of the Hon'ble California Court. Therefore, as per this decision a surrogate mother is a mother where the pregnancy is achieved by using the egg of the surrogate mother, who then on the basis of this decision becomes entitled to retain the TTB and if she so retains the whole purpose of the recipient parents/ infertile couple is defeated. *Then what relief the recipient parents are entitled to? Yes, of course compensation from the surrogate mother, but for that they have to sue her again, means the end of one litigation to start another; out of the fire into the frying pan and allowing the main aim of begetting TTB to be ended in smoke.*
Therefore, with all respect to the Hon'ble California Court, there can be different opinion to the effect that the concept of surrogate mother for the purpose of deciding whether surrogate mother is a mother or not has to be viewed from the point of prudent thinking, logic and concept of a common man which has hither to been in practice and usage. In common parlance the woman who gives birth to a child is known as the mother of that child.

In India, where about 80 percent of the people live in villages and are unaware of the concept of TTB and the surrogate mother. Even in the town population, the concept of surrogate mother is yet to be known fully. Traditionally, the Indian society attaches special importance to the relation of mother and this relation commands the high esteem in the eyes of the offsprings as next to God in the minds of people in India, that is to say people worship mother like God in India. To them mother means the female who gives birth to a child. The technicality of surrogate mother, who delivers a child not for herself to become mother of that child but for other female to become mother of the child though delivered by her, will hardly be acceptable to the people in India. Even the TTB born of surrogacy is likely to pay motherly respect to the surrogate mother in comparison to the recipient mother. In general, the lady who gives birth to a child commands respect of mother and is acceptable as mother in Indian tradition, practice and usage. The relation of mother to a child being considered so pious in India, the surrogate mother who gives birth to a child shall definitely have due respect, place and status of mother of that child in the Indian society irrespective of any technicality or development of TTB.

In general, the dictionary meaning of the word, "mother", *inter-alia*, in this context, as "Noun" is "a female parent"27 "that which has produced or nurtured
anything"28 "producer"29 "maternal tenderness or affection"30 AND as "Verb" the meaning is "to give birth to"31 "to acknowledge, adopt or treat as a son or daughter"32 "to give rise to: produce"33 "to care for or protect like a mother"14 "to beget"35.

Now considering the role played by the surrogate mother where her own egg is not used for fertilization with sperm to achieve embryo and its implantation in her uterus. Undoubtedly in this case, her role starts from the stage of embryo implantation in her womb till the completion of the pregnancy to its full term. During the period of gestation as such, the surrogate mother definitely remains a female parent, adopts the embryo in her womb, treats and cares for and protects the fetus like a mother; nurtures the fetus and provides maternal tenderness; gives rise to; produces and finally gives birth to TTB; covering all the ingredients of the dictionary meaning of the word "Mother". Even immediately after the birth, the infant nourishes on the milk from the body of the woman giving birth, be that woman a real or surrogate mother.

In view of the above, surrogate mother is definitely a mother of TTB to whom she gives birth. However it is altogether a different matter if with a view to preserve the matrimonial ties of the recipient parents and their relation with the TTB, a surrogate mother is not to be recognised as a mother for the purpose of inheritance, succession of her property and TTB as her legal heir. It may be desirable that the legal recognition of status of mother to a surrogate mother is not accorded for the above purpose but her status as mother in true sense cannot be denied. Therefore, in any legislation relating to surrogacy the definition of surrogate mother ought to be clearly defined making it crystal clear that the surrogate mother shall not be treated as mother of the child to whom she gives birth under the surrogacy arrangement for the above purposes.
The next important thing in the whole process of begetting TTB is 'right to be born'. In fact it embodies several different rights, such as the right to be inseminated, the right to be fertilized, the right to be implanted to the uterus, right to be conceived and the right to live and not to be aborted. However the right to be conceived and born is not a right which can be exercised independently by the child in womb, whether NBB or TTB. The child in womb being in the form of fetus and incapable of acting by itself has to depend for its own protection through its parents. More particularly in case of TTB, the mother in whose womb the child is growing has the right to exercise the said right of the baby to protect and secure the baby together with the help of its father but not the donor father as the donor father is mostly unknown and the term father is supposed to include the recipient father who being himself infertile consented for donor insemination. When the TTB is being procured under surrogacy arrangement the right of the fetus, a child in the womb is to be exercised through surrogate mother. Therefore, to exercise its right the fetus has to depend upon the act or acts of its parents which could be bonafide or malafide, deliberate or compelled, innocent, ignorant, unknown or planned and volunteer or under duress, coercion, fear and pressure, motivated or influenced, it becomes difficult to ascertain but when there is a conflict among the persons of whose biological origin the TTB is being procreated and through whom its rights are to be exercised and enforced. Also when there is a conflict between the right of TTB and that of the woman in whose womb the TTB is growing, the matter becomes complex and complicated to get the right alive.
For example:

The TTB has a right to live and not to be aborted. At the same time a mother who is carrying the TTB in her womb has got the absolute rights over her own body including the right to have abortion for her safety. But this right to abort is to be exercised bonafide and not malafide. However it is difficult to ascertain before it is exercised. Therefore, there is a clash between the right of the baby and that of the right of the mother of the baby. How this legal tangle of enforcing the right of both the TTB and that of the mother of the TTB is to be solved is very complex and difficult. But in another situation where there is no conflict between the rights of the TTB and that of the mother of the TTB but there is a danger to the life of the mother who is carrying the pregnancy if the pregnancy is further continued. Under this situation the right of the woman to undergo abortion on medical grounds being bonafide prevails over the right of the TTB to live and not to be aborted, because if the right of the TTB is to be protected then the right of mother to live will be affected and pose serious danger to her life. Therefore, the right of baby under certain circumstances subsides to pave way to the right of the woman and is contingent till the pregnancy is achieved to its term and the child is born.

However after the delivery, when the TTB and the female (mother or surrogate mother) giving birth to the TTB become separate identities then the interest of both can well be considered and protected as per facts and circumstances of the case. After the birth, the TTB as minor can get his or her rights enforced through guardian during the period of his or her minority and by himself or herself after attaining majority.

The TTB whether the outcome of single married couple or the combination
of married couple along with the donor or donors of sperm and eggs or embryos, has the right to live, survive and be maintained. When the TTB has come into existence, he or she has the right to claim and enforce the claims for his or her survival and maintenance. TTB has inborn right to know his or her biological origin or parentage for its all intents and purposes including the right to claim the property of the person or persons who has or have made him or her to come into existence irrespective of the fact whether the TTB is under the care and control of person or persons different than that of the person or persons whose biological origin as donor or donors has been or have been used for his or her production. That is to say in the absence of any law for the time being in force, the TTB has got the right to claim for his or her care, nourishment, survival and maintenance as well as share in the property of the following persons:

(a) The persons who have planned to beget TTB, the recipient parents;

(b) The persons whose biological origin has been used for the outcome of the TTB, whether these persons of biological origin are the couple, the husband and wife themselves or the donors whether of sperm or of eggs and embryos and surrogate mother.

(c) In case of failure of getting through the claims from the persons mentioned in (a) and (b) above, the TTB has further right to claim the same from the doctors or medical professionals who contributed their expertise to bring the TTB into existence, as in the absence of such expertise the possibility of the existence of TTB would have not been possible.

(d) In case of absence of above (a) to (c) the TTB has the right to claim
the same from the Government for its inaction to prevent the persons mentioned vide (a) to (c) from bringing the TTB into existence and for not providing enforcement of his or her rights and claims.

This is so required because TTB has not come in this world of his or her own. But has been compelled to take birth by all or some of the aforesaid persons and thus has right to secure or get secured his or her status in the society as equivalent to that of the NBB. The TTB cannot be allowed to suffer for no fault on his or her part.

How the TTB is likely to suffer; how his or her status is likely to be adversely affected or at stake, can very well be realised if the apprehended possibilities and contingencies are taken into account especially in context of Indian society as stated hereinabove which if not taken care of would flash serious consequences of far reaching effects.

The apprehended possibilities and contingencies adversely affecting the legal rights and status of TTB at par with the NBB :-

(a) Procreation of TTB with donor sperm; denial on the part of recipient father and the consequences :-

Where in a case the TTB is the outcome of donor sperm, there is every possibility especially in Indian society that the recipient father facing conflicts with his counterpart is likely to deny the acceptance of TTB as his own child, obviously pointing out his finger at the biological origin and say, 'The TTB in question is not the procreation of my biological origin and I am not liable to accept and maintain the TTB of others’ biological origin; I am not bound to carry the load which belongs
to other or which does not belong to me; TTB is not mine and I am not bound to
give any share of my properties to TTB who is not mine. Let the TTB go to hell
I am not bothered'. If such possibility becomes reality then what would be the fate
of the TTB? There lies the legal problem in the absence of any law to bind such
arrogant recipient father, who would go scot free throwing the status of TTB in
the pool of uncertainties. Being so dangled what shall the TTB do? Where shall
he search and seek the remedy? What is the fault of the TTB? Why should he or
she be sufferer and victim of such eventualities having no fault of his or her own?
Abandoned or neglected as such, what option the TTB has to go for? Will TTB not
be offended, revengeful and become vagabond, beggar or hard-core criminal? If
offended and revengeful, the arrogant recipient father may be the first target to have
the consequences in particular and society at large; in case of vagabond or beggar
will dabble the society with nuisance all around and if hard core criminal then
society will be lashed with terrorism: What is the net result? Nuisance, disturbance,
crimes and terrorism. Who is responsible to control all this and restore social
harmony? The Government at the cost of heavy financial involvement. From where
Government would get finance? By way of taxes to be levied on the people which
the people shall have to pay through their nose including all. Thus petty individual
eventuality has the far reaching consequences of implicating every member of the
society.

(b) Procreation of TTB with donor eggs, embryos and surrogacy
arrangements :-

In this case, apart from other problems discussed earlier; the recipient mother
whose egg or womb is not used for begetting TTB has the possibility of abortive
or reduced motherly care and protection to TTB and sometimes even of denial
thereof or less attachment towards TTB and gradually least interest to look after or to maintain the TTB at all. If surrogate mother is a married lady having children, then apart from the TTB being discarded if born as abnormal; additional problems, like affecting her own relationship with her husband and own children as well as that of the TTB and her children, who may develop indifferent attitude leading to dispute. Thus there may be a situation implicating the status of TTB. Risk of inviting all those problems as stated hereinabove is already there and if the surrogate mother refuses to handover the TTB to the recipient parents the fight for custody of TTB may land the parties unto the litigations wherein the status of TTB again is likely to be at stake. If the litigations end in favour of surrogate mother, the TTB will be deprived of the love and care of the biological parent or parents who desired to beget it. Will such TTB remain normal? Apprehension is that such TTB is not likely to remain normal.

(c) Broken agreements / arrangements will badly shake the status of TTB :-

Where the surrogate mother is half the way down carrying the pregnancy for delivery to the recipient parents who happened to rescind the agreement but the time of revocation of the agreement the pregnancy has already crossed the period of seven-eight months where it is not possible for the surrogate mother to go for abortion and she under the circumstances is compelled to deliver a TTB, who, for herself shall be unwanted, the legal status of the TTB will be highly at stake. Apart from the above there are likely to be many other complicated and complex problems relating to the broken agreement or arrangements of frozen sperm, eggs or embryos owing to theft, smuggling, replacement etc. or otherwise. Thus the frozen sperm, eggs and embryos meant for particular individual would fall in the hands of stranger somewhere else affecting the legal status of the TTB.
(d) Donors anonymity clouds the paternity: status of TTB drains into fag end if the recipient parents suddenly die:

Donors involvement to procure TTB with the label of anonymity clouds the real paternity of TTB whose recipient parents die suddenly after begetting TTB and other legal heirs of recipient parents refuse to accept the TTB as legal heirs of the recipient parents. Thus the status of TTB is likely to be drained into fag end, totally shaken and unascertained. What shall be the fate of the TTB under these circumstances can very well be realised. All those problems relating to the nourishment, maintenance, share of property etc. are likely to boom around the TTB like a boomerang fixing TTB in the state of uncertainty and distress. The consequences of which shall follow the lead.

(e) Duplicate line of heritage likely to shake the status of TTB:

Knowing TTB as the product of donors, the other legal heirs of recipient parents are likely to deny the original line of heritage. Therefore, from the stage of recipient parents a duplicate line of heritage would run parallel to the original line of heritage. Thus, the status of TTB at par with NBB would be completely shattered.

(f) Procreation of second or third TTB by the same couple likely to affect status of TTB:

As there is no bar to obtain second or third TTB, the same couple if procreates the second TTB, the likelihood of status of any of or all the TTBs being at stake cannot be ruled out. The first and second TTB if obtained from different sets of donors, then the chances of internal rivalry cannot be ruled out, which would certainly affect the status of TTBs.
The philosophy of Indian society based on original male line of heritage and paternity may not accept the status of TTB at par with the NBB. Then the status of TTB shall remain inferior to that of the NBB.

On the other hand the TTB has also certain duties to perform; that is to say, it is not open for the TTB to do any deed, act or thing by which the harmonious structure of the society is likely to be shaken. For that matter, the TTB has to keep himself or herself under self control and must devote wholeheartedly to the parents under whose care and protection he or she has been kept and brought up. For that matter, the TTB, even if he or she, is in some difficulty, should not break the relation and ties with the parents under whose care and protection TTB is being brought up. The TTB should not adopt any indifferent attitude towards such parents and should not intend, tempt or incline to go back to the persons of his or her abiological origin in the fits of any temptation natural, psychological or emotional.

In view of the above unless the interest of the TTB is duly secured and preserved by a strong legislation it will always be exposed to danger and the status of TTB shall remain uncertain. Therefore, the law should protect the TTB from all angle securing the TTB, its well deserved place in the society so that nobody should look down upon the TTB, or treat the TTB in an indiscriminate manner in the society. The law should also bind the TTB for not creating nuisance in the society.
3.9 The legal implications of TTB relating to the rights and duties of physicians and their staffs:

The legal implications and complications of TTB in respect of the rights and duties of the physicians and their staffs are likely to be in cases of manipulation of sperm, eggs and embryos or surrogacy arrangements, because there is an ample scope of exploitation, theft and smuggling as discussed hereinabove. As the frozen sperm, eggs and embryos are placed in the hospital or sperm bank and remain under custody of the physician and their staffs so it is their duty to see that everything remains intact in order to avoid such complications and implications. Therefore, the physicians and their staffs engaged in the field of procreating TTB for the needy infertile couples have certain essential duties which they are required to perform faithfully, sincerely, fairly and honestly with full devotion and dedication.

They are required to maintain, preserve and secure the safety and secrecy of the records of the couples begetting TTB, donors of sperm, eggs and embryos and also the normal case history of the persons involved in begetting the TTB. It is also their duty to inform the recipient parents above all the consequences including legal and biological implications of begetting TTB. They are also expected to take care of their professional ethics.

For the sake of convenience the situations giving rise to legal implications and complications for not maintaining the records and for misusing the liberty of maintaining the secrecy and ethics are discussed hereinafter under the head "The legal implications of TTB relating to ethics, morality, psychology and social impact".

The role of physician is very important and can help in reducing these implications.
As per Leon Speroff, Robert II. Glass and Nathan G. Kase, "One of the important missions for the infertility physician is not necessarily to take credit for achieving a pregnancy, but to speed up the period of time required for that achievement. For couples in their 30's, the recommendation to seek help promptly is valid—the sooner a problem is detected, the better.

In response to this need physicians should have four goals in mind:

1. The first goal is to seek out and to correct the causes of infertility. With proper evaluation and therapy, the majority of the women attending an infertility clinic will become pregnant.

2. The second goal is to provide accurate information for the couple and to dispel the misinformation commonly gained from friends and mass media.

3. The third goal is to provide emotional support for the couple during a trying period. The inability to conceive generates a feeling in many couples that they have lost control over a very significant segment of their lives. That burden is aggravated by the additional impositions generated by the manipulations that couples have to undergo during the infertility investigation, including the need to have intercourse on schedule. Couples need to have an opportunity to ventilate their concerns and dispel some of their fears. A valuable adjunct to the efforts of the physician are support groups for infertile couples such as those organised by RESOLVE,

Resolve National Headquarters,
5 water street, Arlington, M.A 02174
Meeting in groups allows individuals to realize that their problem is not unique, and it enables them to obtain information on how others cope with infertility. It must be emphasized that, while severe anxieties can interfere with ovulation and frequency of intercourse, there is no evidence that infertility is caused by the usual anxieties besetting a couple trying to conceive.

4. An often neglected goal is that of counseling a couple concerning the proper time to discontinue investigation and treatment. This is especially important in the 10% of couples with no known cause for their infertility. Despite the absence of pathology, couples with 4 years or more of infertility have a poor prognosis.\textsuperscript{36}

In India the physicians have got important role in order to overcome the infertility without encouraging the parties to go for TTB with donor insemination and surrogacy which systems in fact are not congenial for the Indian society. They can improve upon the infertility problems by playing their important role keeping in mind the complicacies of begetting TTB with the system of donor insemination and surrogacy. It is not essential that the cases of infertility can only be removed by donor insemination and surrogacy. In fact this approach is very easy approach to beget TTB but has got far reaching complications and legal implications. The main aim of the physicians in India should be to remove the infertility without involving these two systems of begetting TTB, lest there are chances of litigations even implicating the physicians and their staffs.

However inspite of best efforts of the physicians to perform their duties, sincerely, faithfully and honestly, the possibilities of some problems and false claims of compensation against them cannot be ruled out and therefore they have the right to protect themselves against any untoward incidents of implicating them.
in false claims during the course of their professional commitments. However, their such rights can only be protected if they take some precautions before accepting the infertility cases for TTB and provide the treatment for TTB to the infertile couples. In the absence of any law providing and securing the rights of the physicians and their staffs, one of the safeguards is to obtain the undertakings from the patients getting treatment under them for TTB and enter into an agreement clearly stating the terms and conditions for providing treatment to beget TTB. Of course this precautionary measure is being taken by some of the doctors. Dr Indira Hinduja says, "My patients must sign a consent form that both husband and wife must sign before I use a donated sperm." But this is only consent agreement between husband and wife. To protect the interest of doctors and the parties, there should be an agreement between the doctors and their patients begetting TTB clearly stipulating terms and conditions for begetting TTB, including the matters relating to compensation. This would reduce the possibilities of false claims against the doctors.

In addition to that the physicians should remain careful and ensure proper supervision over the staffs to ensure security, safety and secrecy of the records, storage of sperm, eggs and embryos. If there is any lack of such supervision the physicians are likely to face litigations for the consequences of the acts done by their unscrupulous staffs.

For example, if the sperm of 'A' is stored for the purpose of inseminating 'B', there is possibility of sperm of 'A' being stolen, misplaced or replaced. If the sperm of 'A' are replaced with the sperm of 'X' who is suffering from AIDS or some other venereal or genetic disease by some interested person or persons with the help of some of the staffs of the physician who being ignorant about the replacement of the sperm of 'A' with that of 'X', inseminates 'B' with the replaced sperm of 'X'
believing the same to be of 'A' and the child TTB takes birth with the disease or
diseases of 'X'. Then lot of complications and legal implications would come up
such as claims for defamation, compensation and even for criminal prosecution
implicating the physicians for none of their faults. Therefore it is better to maintain
proper supervision.

3.10. The legal implications of TTB relating to ethics, morality, psychology
and social impact :-

Ethics and moral play important role in the life of an individual as his or
her activities are generally regulated by the standard of his or her moral and ethics.

The implications of TTB relating to its ethnical and moral aspects depend
upon the modes and methods by which the TTB is obtained together with family
background of the infertile couples seeking to beget TTB and the practice, customs
and usage of the society of which they are the members. They shall be comparatively
more if the TTB is the product of the sperm of another man. Further more if the
sperm used is from fresh semen obtained by masturbation without conducting
medical tests for venereal disease, AIDS and genetic defects; as in such cases the
disease of the sperm donor is likely to be transmitted to the TTB and the mother
bearing such pregnancy. There is an evidence of some women having inseminated
in the USA with sperm from AIDS victims. Hence to avoid the hazards as such,
screening of donors for possible disease has become general medical practice. An
expert opinion in this regard is that, "Screening donors for hepatitis - B surface
antigen and core antibody, cytomegalovirus, and for acquired immune deficiency
syndrome (AIDS) has become accepted medical practice because of reports of
transmission of these diseases by donor insemination".38
According to Ranjan Mathur, "Following reports of two American women who were reportedly inseminated with sperm from AIDS victims in June 1987, some doctors here are now concerned about the possible repercussion of fresh semen inseminations." 9

Other problems in this field are likely to arise out of the deliberate manipulation of records, maintaining secrecy of DI, sex selection, donor selection and surrogate arrangements including thefts, exploitations and smuggling thereof. Even some of the doctors engaged in producing TTB also support this view.

Dr Indira Hinduja agreed, however, that patients could be "taken for a ride by unscrupulous practitioners who would exploit the lack of awareness in them, and it is very easy to hide faults in such treatment because people are still mystified by IVF". Further, she admitted: "Though I do receive pleas from some patients for a male child, on ethical grounds I would never agree".40

Dr Sadhana Desai, also of Bombay, who in association with Dr Mehroo Hansotia, has the distinction of treating 319 IVF pregnancies with a 'takehome rate' of 222 since 1986, also admitted receiving SOSs from desperate patients for a male baby. "I always tell them that the world's first test tube baby was a girl, and so were the first ones in Australia, America, France and even India".41

"Dr Mohan Lal Swarankar, the consultant obstetrician and gynaecologist, and managing director of the JFMRC, was away in the US during our visit. On his return, he enthusiastically commented, long-distance, about the test tube boy boom in his clinic: "Yes, two more babies are coming this month who will also be boys. It's something amazing; It will be very difficult to convince people that
we are not doing something. But I do want female babies also to come. I don't do any X-Y separation. I have never performed abortions in my clinic. I seek to specialise solely in IVF."42

"Both the Junior gynaecologist, Dr Gunjan Jain, and the embryologist, Dr N. Sharma, insisted that the centre was quite ethical in its approach and was not practising any specific method of sperm separation with a view to selectively producing male babies".43

Not maintaining the records of TTB cases is definitely unethical. It is essential to maintain, preserve and secure the records to avoid any malpractices in the process of begetting TTB. So also is viewed by Ranjana Mathur who says, "Religion and society's role is to give DI sanction, but what is also important is to ensure that the medical practice does not encourage any malpractices. Therefore it is a positive sign that doctors are beginning to think about the need to maintain proper records. In America, law professor George Annas, has advocated four points emphasising the need for proper record-keeping. According to him, proper records should be kept to see how a particular donor's sperm works. For example, if a defective child is born, the sperm should be destroyed and the donor should not be called to donate again. According to a study, most physicians have no policy on the number of times they use a donor's sperm. This, coupled with the lack of medical knowledge of the first child born with the sperm, could significantly inverse the chances of producing a string of defective children. Amazingly this lack of medical knowledge about the child they help in producing with DI, is an intrinsic part of these doctors' practice. Couples, in a bid to maintain their secrecy rarely, if ever, get back to their fertility specialists to inform them of their child's birth and his health.
The second point Annas emphasises, is that no meaningful research on the characteristics of donors can ever be conducted if records are not kept. He also highlights the need of DI children to have information about their family history. And although it may or may not be in the best interest of DI children to have information about their family history, this can be available to them as adults only if records containing appropriate and accurate information are kept at the time of their conception. With increased attention being paid to the contribution of genes to personality and health, it will surely not be in the best interest of DI children to make certain that they never find out the other half of their biological origin. Not having access to this other biological half can be a serious problem considering inherited diseases such as Tay-Sachs, cystic fibrosis, diabetes and sickle-cell anemia, as well as genetic predispositions toward heart disease and alcoholism. But in spite of the growing awareness, chances that physicians in India will start keeping records of donors and recipients seem dim, and of them releasing them to children 20 years from now even dimmer.\textsuperscript{44}

"Medical secrecy is both a legal and a medical obligation. It is especially important in AID since it concerns the future life of the child, and measures should be taken to protect it. The parents themselves must remain free with regard to the confidentiality of their treatment. They will decide whether or not to tell their children later, but it is the physician's responsibility to ensure that relatives or the AID children themselves not accidentally obtain medical files, including letters to hospitals and other physicians. Coding of data can preserve the medical information for future requirements and still respect the secrecy of the parents and donors'.\textsuperscript{45}

Thus to maintain secrecy is also one of the essential ingredients of ethics and morality. However there is bright chances of misusing this plea of secrecy by
crossing the barriers of all ethics and morality. It is strongly apprehended that on the plea of this secrecy, there is another possibility of giving rise to crime of cheating by and between the spouses. For example, a wife may secretly get herself inseminated with the sperm of another man without even letting know her husband with the help of a physician. Likewise husband may also arrange for donor insemination instead of his own sperm insemination to hide his infertility with the help of a physician. Thus cheat other. Also some other members of the family may join in such type of cheating. This is against all cannons of ethics and morality and deserve to be condemned. If it is some how done and somehow other spouse comes to know, then what shall be fate of their matrimonial relations can very well be imagined. 

Demand for secrecy of this kind is very often made and that too very strongly as clearly reveals from the following abstract :-

"DEMAND FOR SECRECY : But when it comes to demand for artificial insemination with donated sperm, people's attitudes change drastically. 'The demand is tremendous. We get all kinds of requests', Dr Hinduja says, 'Most requests are accompanied by appeals for utmost secrecy. Sometimes there is a wife who wants to be inseminated without letting the husband know, or a husband who says, 'please don't tell my wife that the sperm is donated by some one else' or a father who says, 'I know my son is sterile but please don't tell my daughter-in-law about it'.

Usually such requests are not entertained. 'My patients must sign a consent form that both husband and wife must sign before I use a donated sperm'. Dr Hinduja says''.

But then all are not Dr Hinduja. This secrecy encourages for non-maintenance of records. As Ranjana Mathur puts it, "This secrecy has resulted in an alarming
lack of medical records" "A physician may do one hundred inseminations and not keep any records on them," says Anjali Malpani. Doctors refute this by claiming, that part of the reason for the well entrenched anonymity has to do with protecting the social father from the stigma of infertility and the family from becoming an object of idle curiosity and social pressures. Reinforcing this fact is Dr Mehroo Hansotia, whose fertility clinic has also done several inseminations. Dr Hansotia protects his patients' privacy with an unwarranted aggression, saying, "I don't think the doctors have any right to talk about DI. It's a very personal subject for the patients and not something to be talked about". It's an arrangement most patients are happy with. But chances of exploitation of desperate couples yearning for a child at the hands of unscrupulous doctors are high in such cases. Ignorant of procedure, the success rate, the terms of treatment and cost, these couples can pay upto Rs. 60,000/- and yet, return disappointed. But because they would not like the world to know about their misadventure with infertility and DI, they do not talk about it. With the result that the clinics and the doctors continue their practice, secure in the knowledge that no one will bring charges of fraud or malpractice against them.

As long as couples comply with, and even demand secrecy and anonymity, these problems cannot be tackled. But it is not just the infertile couple who keeps the system working by the use of strangers. Anonymity has such a tight hold throughout the sperm distributing system, that to remove it or even jostle it would make everybody nervous. "None of our recipients or donors ever exhibit any desire to know who the procreative partner is", notes Anirudh Malpani. He is convinced that none of them would come near a DI clinic if their anonymity was at stake. Says Arun Chatterjee who is a long-time donor, "I am not interested in knowing who the recipient is. I donate sperm purely to help somebody. I want no emotional
ties with the recipient". But then these views of Sri Arun Chatterjee being his own views can not be considered as of general application. The other donors may like to know where their sperm are being used and who is the TTB of their procreative biological origin. According to M. Habibulla, "Sperm donations usually come from medical students..... The same donors, after acquiring maturity, getting married and having their own offspring, come to realize the importance of producing a child. This newfound father-child relationship awakens in them a sense of regret, concern and fear for the children they fathered without any recognition of being the actual biological fathers".

Donor selection is mostly done by the physicians and the sperm buyers have little or no choice. According to Ranjana Mathur, "Though there is some controversy as to how long DI has been around in India, (some say 10-15 years) the fact is that there is only one sperm bank-the Malpanis' in Bombay. This leaves the sperm buyers with little or no choice. Says Parvati, "We are in no position to argue. Our ignorance, plus the doctor's attitude that he knows best, prevent us from questioning him. We just hope he has been careful". Therefore, it gives ample scope of malpractices. So also it is in the case of surrogate mothers.

Sex selection involves ethical aspects of the matter. Particularly in India, there being a male dominated society, selection of only male sex would create disproportion in male and female sexes and the day will come when there would only be single sex available.

"Soon after this technique was discovered, its misuse in humans was banned by law in the West. But, in India, there is no law on IVF, leave alone a body of experts to supervise the ethics of the trade and certify the institutions.
Recent study of Seema Paul as to "Why are all Test Tube Babies Boys?", reveals that in India some of the clinics are deliberately producing TTBs as Boys especially the Jaipur Fertility and Medical Research Centre; which is not a healthy sign for the society in India.

In fact during visit to JFMRC on 17th April 1993, nice display of the photographs of the five male babies on the notice board was found, a copy of which was furnished at his own by the operation theatre - in - charge, Sri Sunder Lal. There was a bundle of news paper cuttings almost all projecting the highlights of Male Baby Born at JFMR. It was crystal clear that all the babies born there were male. Till then five and two were expected, that too boys. It was nothing but remain wondering that how could it be? Not even a single female baby. Definitely it is achieved by sex selection, only with view to attract more patients for their profit oriented business brushing aside all the professional ethics and moral. Especially in our country, people will rush to JFMRC for boy is perfectly natural. More patients means more name, fame and profit. Where is the values of ethics and morality? One is forced to remain pondering upon. Seema Paul rightly says, "Even if we look at the present figures, the JFMRC has set a record of having all five (and almost certainly, seven) test tube babies carrying their father's fixtures. No other IVF clinic in India has, so far, produced such an impressive string in a cent per cent performance.

The record is quite dubious, however, because the clinic is evidently practising a sex selection technique which will further distort the adverse male-female ratio in Rajasthan.
'Dr Sharma ascribed his clinic's brilliantly chauvinistic, even if dangerously unethical, results to 'sheer chance', and added reassuringly that 'there could be a string of girls at a future date'.

But after discussing the subject with a number of gynaecologists, IVF specialists, embryologists and scientists, we feel reasonably confident that the mysterious feat is a result of sex selection.

Seven male babies in a row through IVF cannot simply be passed off as a 'coincidence', said Dr P. Bedi, a New Delhi gynaecologist who trained at Cromwell in London, now considered the Mecca of IVF.

Added an expert in the subject at the prestigious National Institute of Immunology in New Delhi, who requested anonymity: 'It's most likely due to sex selection'.

Science, he said, was in all probability being selectively (and unethically) used to forward the social belief that the male sex is superior and male babies, therefore, more desirable.

Specialists now tell us that techniques for sex selection have been available for nearly a decade. Scientists, they say, have since a decade now been able to differentiate male, or the (XY) chromosome, containing and, therefore, male-producing chromosomes containing and, therefore, female-producing chromosomes through various techniques and observations.

The situation in the rest of the country is not very alarming. On the face of it. And not yet. Bombay-expectedly-boasts at least 338 test tube babies since Dr...
Indira Hinduja recorded India's first over six years ago (and going by pregnancies confirmed through ultrasonography, it is over 800), with a reasonable distribution of 167 male to 165 female babies (which include three sets of twins exactly levelling out, and not counting for Dr Farah Mirani who was out of town and Dr Feroza Parikh who declined to divulge any figures at her clinic).

Madras has 16 males and 6 females; Bangalore has 44 males and 41 females; Calcutta reports 7 males and 4 females (excluding Durga Agarwal, whose being a test tube baby was medically contested, leading to the suicide of Dr Subhas Mukherjee); and Delhi has five test tube babies with a 3:2 proportion.

Jaipur, of course, is different.52

"In all probability", said an embryologist in New Delhi, "the Jaipur clinic has had a string of male babies by practising the Percoll separation method and they are not allowing it to run its full cycle so that they are sure of getting only male sperm. Or else, they have obtained mastery in the separation technique which employs albumin.53

"Normally, the JFMRC spokesmen claimed, they do not even divulge the sex of the unborn child to the parents though they learn about it through ultrasonography at the end of the first trimester.

But contrary to their claims we found that the parents of two of the three test tube babies had known beforehand that a boy would be born to them.

The first such couple was the Jaipur bureaucrat and his wife, who spoke on the assurance of anonymity, while the second couple was a bank employee and his
wife, now living in Dausa, 60 kms from Jaipur. The Dausa couple was, in fact, the recipient of the first test tube baby in Rajasthan, Sailesh Chauhan, who is now two and a half year old.

Sailesh's mother, Pushpa Chauhan said, 'Doctor Sahab ne mujhe bata diya tha ki main bete ki maa banne wali hoon (The doctor had told me that I was going to be the mother of a boy)'.

More pertinent, the parents of the fifth and latest test tube boy born at the JFMRC, Mannu Singh, living in Bharatpur, told us that Dr Swarankar had confided to them that IVF more often than not resulted in the birth of boys.

Not only is this claim belied by nationwide statistics, but a fact not to be overlooked is that the world's first test tube baby, Louise Brown, born on July 25, 1978, and India's first test tube baby were both girls! Other 'firsts' in other countries, too, were also girls.

Ironically, sex selection is scientifically intended for producing female babies. Even in animal husbandry, where IVF was first practised, the intention was to have female young in order to increase milk supply!

Our investigation also established that, contrary to their claims, the doctors and the staff of the JFMRC have been actively promoting their clinic as a place where boys are produced.

Apart from Dr Swarankar's own statement to Mannu Singh's parents, the same claim was reiterated by the operation theatre-in-charge at the clinic, Sundar Lal.
While accompanying this reporter to the home of one of the test tube boys, Sunder Lal said, 'IVF generally produces more male babies because more motile sperm are selected for fertilisation with the egg and normally, the more motile sperm are the male sperm'.

Also helping in this image-building is the news media of the socially backward state. A close examination of the newspaper clippings, which the JFMRC had dutifully filed and kept in the patients' waiting room, revealed that the media had also tended to play up the point that all the five babies born at the centre had been boys while this should have either been incidental to the story or raised doubts.54

According to S. J. Behrman, Robert W. Kistner and Grant W. Patton, "In September 1986 a committee chaired by H. W. Jones published a monograph detailing the ethical considerations of the new reproductive technologies. This comprehensive report established a general basis for dealing with ethical questions regarding reproduction and the right to reproduce. Important definitions, such as that of the preembryo were established. Each new reproductive technology was dealt with individually and thoroughly";55 according to them, the report of this committee has been published in September 1986 issue of 'Fertility and Sterility' from the American Fertility Society. They have listed 'Summary of Points of Special Interest' as Appendix-1 on Ethical Issues.56

Some of the general considerations important for our discussion under this head are :-

"An ethical evaluation should regard the human person as 'integrally and adequately considered' and take into account the fact that the person is both individual
and social (chapter-5 of this report)."

"There are four major issues that must be considered in arriving at an ethical judgement on a new reproductive technology: (a) the degree of artificiality of the new reproductive technology, (b) the moral status of the human preembryo, (c) the role of the family or genetic lineage, and (d) the appropriate role of government. Contemporary moral philosophers have identified respect for autonomy, beneficience, and justice as the three ethical principles that underlie moral judgements."

"Even if there is legal protection for procreative liberty, there may be limitations on the moral right to 'found a family'. These might include transmission of disease to offspring, unwillingness to provide proper prenatal care, inability to rear children, and possible harm to offspring from the required technology, overpopulation, and nonmarriage (chapter 9 of this report)."

"The committee finds that the human preembryo is not a person but is entitled to respect because it has the potential to become a person. This view limits the circumstances in which a preembryo may be discarded or used in research. The Committee recommends that each local program establish clear guidelines for decision-making regarding preembryos. Within the limits set by these guidelines, gamete donors should have primary decision-making authority (chapter 12 of this report)."

Regarding 'The New Reproductive Technologies' the views of the members of the Committee on some of the issues important for our discussion are as follows:

"Several reproductive option now use third parties -- donor sperm, donor
eggs, donor preembryos and the various forms of surrogacy. There is one member of the Committee who finds any third-party involvement ethically problematic. (Appendix A of this report).

The Committee agrees that the basic rationale for in vitro fertilization (IVF) outweighs foreseeable risks to the potential offspring, the couple and society. It unanimously finds that basic IVF is ethically acceptable (chapter 13 of this report).

The Committee also finds ethically acceptable the use of artificial insemination with husband's sperm (AIH) for demonstrated medical indications. The use of AIH for uncertain indications or sex selection should be regarded as a clinical experiment, rather than conventional practice (chapter 14 of this report).

The Committee finds the use of artificial insemination with donor sperm (AID) ethically acceptable (chapter 15 of this report).

Similarly, the Committee finds ethically acceptable in IVF the use of donor sperm (chapter 16), the use of donor eggs (chapter 17), and the use of donor preembryos (chapter 18) (Chapter references are to this report).

The Committee finds that uterine lavage for preembryo transfer should be regarded as a clinical experiment, general application of which is premature (chapter 19 of this report).

The Committee finds ethically acceptable research on the preembryo for the purpose of generating new knowledge not otherwise obtainable for benefiting human health (chapter 23 of this report).
The Committee opposes the use of surrogate gestational mothers for nonmedical reasons. The Committee recognizes, however, that there could be a role for surrogate gestation in reproductive medicine. If surrogate gestational motherhood is used, it should be pursued as a clinical experiment. Therefore, general application of this procedure is considered to be premature (chapter 24 of this report).

The Committee is not favourably disposed to the use of surrogate mothers for nonmedical reasons. However, the Committee believes that there may be medical reasons to justify individual decisions and sees no adequate reasons to recommend legal prohibition of surrogate motherhood. Nevertheless, the Committee has serious ethical reservations about surrogacy, and these cannot be fully resolved until appropriate data are available for assessment of the risks and virtues of this alternative. The Committee recommends that if surrogate motherhood is pursued, it should be pursued as a clinical experiment. Therefore, general application of this procedure is considered to be premature (chapter 25 of this report). 61

Now considering the applicability of the views of this committee in India, we may differ on two points:

(a) It is strongly apprehended that the third party involvement as ethically problematic as found by one member of the Committee as per Appendix - 'A' of their report; and

(b) The use of artificial insemination with donor sperm (AID) in India as ethically and legally problematic. The use of donor eggs and embryos may not be so problematic but the AID shall have lot of ethical and legal problems. The logic behind is that the Indian society is not the same as that of the American society.
In India the matrimonial relations are based entirely on different footing than that of the U.S.A., particularly in Hindus these relations are considered as sacrament. Secondly the traditional strongholds and values of blood relation to maintain the line of heritage shall never allow the AID to be ethically acceptable solution to infertility.

Even people who opted for AID TTB under compelling circumstances and good understanding with their counterpart accept the system as opposed to ethics and morality which is crystal clear from the following passage:

"I was very nervous about having a baby by some strange man. It did not seem wrong. But it did not seem right either... I had accepted DI but it was just so... strange", says Parvati, a 29-year old housewife who went in for DI after years of blood tests, Mystersaplingrogras, dilatation and curettage (D&C), Laparoscopy and dye perturbation, mid-cycle post-coital test, sperm-cervical mucus contact test and Kremer or sperm invasion tests.62

"As her delivery date approaches, Parvati finds herself getting increasingly apprehensive. 'There is an uncertainty', says she. "We have placed total faith in our doctor since we had no control over his selection of a donor for us. Often I find myself wondering about who he is, what he looks like and what his medical and cultural background is. But it is something she would not like to discuss with her husband. Or the doctor".63

Even if some one goes for TTB with AID, the Indian Society will hardly accept the TTB as equal to that of NBB; as Ranjana Mathur also says, "Despite accepting DI as the most logical cure for male infertility, society has refused it social
sanction. Most DI operations are done under a heavy clock of secrecy. For two basic reasons: society's confusion about the question of paternity and secondly its fear about the possible medical repercussions of a treatment which has after all not gone through a lot of research and follow-up". Even the parents who arranged for TTB with their own biological origins through IVF have to face the social stigmas, taunts and teases due to which they stop telling the people that the child is the production of TTB and also have the fear as to how they would tell about the birth of the TTB to the TTB. While worried about the impact of indifferent attitude of the people of their village on the child's psychology; this is what one of the TTBs parents, namely Gautam's parents have to reveal, "We have now stopped telling people that Gautam is an IVF baby", said his mother, "but we have no plans of hiding this information from our child when he grows up. We would definitely like him to know to what lengths we had to go to have him". If this is the position in India of the TTB's parents who have procreated their child with their own biological origin through IVF, then what would be the position of those couples who opt for TTB through DI, can very well be imagined.

Even the adopted children in Indian society face the taunts and ridicule then will it spare the DI children? Of course, not. DI children shall never be accepted in Indian Society unless the Social Father, i.e. the TTB holder is given the same status as the biological father, i.e., the TTB procreator, is also crystal clear from the following passage:

"Arguing the case for adoption as opposed to the use of DI, 30-year-old biologist Chayya Mehta who has gone in for adoption herself feels, "As yet society does not accept the presence of children who are not biologically your own. See the taunts and ridicule it heaps on adopted children. In such a society, going in for
DI would be branded as nothing but stupidity. The hostility you and the child can face from the immediate family plus the humiliation your husband will have to undergo in the case of DI will be tremendous. In my family, which is supposedly progressive, there was tremendous resentment against our decision to adopt. They felt that we were wasting our energies on someone else's child. If I had gone in for DI, my family would have rejected me outright and treated their son as a freak. Added to which is the fact that the chances of such a child being socially rejected in the marriage market by society are very high".  

"These, incidentally are the sort of reactions which alarm a lot of would-be DI users, doctors and sociologists.

It is keeping these facts in mind that a lot of DI users in India or even abroad will never tell their child its true origins. Many couples also feel that DI is not conducive to good husband-wife relations. 'There is bound to be jealousy. And even if the man does not say anything, he is bound to feel like an out-cast in the whole DI affair', says Chhaya Mehta. 'Acceptance will not come about till the time society learns to separate the sperm donor from his progeny', says Arun Chatterjee. 'Only when the social father, who to my mind is anyway more important, is given the same status as the biological one, will we be able to deal openly with the issue. Till then I really don't think the child or society should know'. Dev, who along with Parvati has faced the taunts of society for nine years, is very reticent about talking of his experience -- a reticence which may reflect the social and emotional difficulties of his role -- agrees with Arun".  

The parents of DI children shall have to face the consequences and fear of conveying the information of obtaining TTB with DI to the TTB and to ward off
this fear and also the social impact against the DI children, most probably they might keep the information as secret and not pass on to their TTB.

"The dilemma of the recipient couple, whether they should disclose to the child its genetic heritage, and if yes, how and when this should be done, is an agonizing experience. To reveal to a child that it was conceived by a paid donated sperm may prove to be a devastating psychological blow. If the secret remains undisclosed, it could lead to a tremendous pressure on all concerned. Divorces stemming from such tensions over DI have already become a common phenomenon.

Children created through DI become not only curious but also obsessed with discovering their genetic heritage".68

Ranjna Mathur says, "According to him (Arun) with adoption it is obvious to the outside world that the woman is not bearing her biological child and therefore couples don't bother to hide the fact. But in the case of DI, the social invisibility of paternity and assumption of paternity within marriage, makes his position as a 'surrogate father' more likely to be kept secret".69

"Another compulsive reason for keeping a DI child from knowing it biological origins could be to prevent a strain in the already difficult parent-child relationship. According to research in America, four of the five DI offspring contacted for interviews, spontaneously mentioned that they perceived themselves as smarter than their parents and attributed their perceived superior intelligence to their origins through DI. This attitude could be damaging for an equal relationship between family members, say psychologists. At this point they lay special emphasis on the social father's already battered ego".70
However this secret may not hold good for ever and the TTB might get the information of his or her birth from other sources. Otherwise also such secret may not remain secret because whenever and whereever there is a fire, there is smoke also and people come to know about the fire automatically. So somehow the TTB will also come to know about such secret.

After learning the story of his or her birth as TTB with DI; the TTB might have so many queries challenging the very approach of his or her so called parents who had no biological contribution for begetting TTB and have hidden the true biological origin of the TTB and for that reason the persons begetting TTB should be ready to answer. The needy persons who are now becoming crazy for begetting TTB; may have to face a situation cutting a sorry figure in their old age even in front of the TTB itself; who after attaining the age of majority, questions the persons begetting him or her, about the veracity of their acts in begetting him or her as a TTB by adopting donor insemination from the unknown person and thereby depriving them of their right to know their biological origin. The TTB may even start hating them for their such unethical act and conduct. On the other hand the TTB may become crazy to search for and to find out his or her biological origin totally abandoning the TTB holders. The possibility of this kind of incident cannot be ruled out. Then what would be the fate of the so called TTB holders? Will they then not realise the blunder they have committed in begetting TTB by DI? Time will only say but the apprehension stands. Hope this apprehension to remain as apprehension and not to become a reality, for if it becomes a reality it would lead to a havoc in the society.
3.11 The legal implications of TTB in respect of individual liberty and right to beget TTB by single person, male or female:

As we know that every person has the liberty or right to beget a child either NBB or TTB but it is subjected to the limits and bounds imposed by the society of which the person is a member. In a civilised society, the manner of exercising one's right also ought to be in a civilised manner. Since an individual does not live in an isolation but in the society, so it is desirable that every individual exercises his or her right in such a manner that any other member and the society as a whole is not affected. As the TTB would also become a member of the society so it is the duty of the individual to ensure that the rights of the TTB also are not affected. In case the rights of the TTB are affected in any manner, then the apprehended danger to the status of TTB would become eminent danger. The legal implications and social complications would arise. Society would be affected and litigations would follow. Keeping this end in view, the relevant question which arises are:

(a) Whether any individual has got the liberty and right to beget the TTB being a single person which includes a bachelor, unmarried, widower or divorcee in case of male and spinster, unmarried, widow or a divorcee in case of female?

(b) Whether such a person should be allowed to beget TTB? and

(c) If allowed or otherwise such person goes ahead and obtains TTB then what would be the consequences?

To analyse these issues; by now it has become crystal clear that the recent technology of procuring TTB does not essentially involve the actual participation
of the male and female to perform coitus for begetting a child, the TTB. Therefore, it is quite possible for any single person, male or female, to beget a TTB without entering into the matrimonial ties. In most of the Western countries the Therapeutic Insemination with Donor Sperm (TID) or Artificial Insemination Donor (AID) has been legalised. The children obtained by TID/AID are not considered as illegitimate. The method of overcoming infertility with this method is in full swing and the single women have been preferring to beget TTB while still remaining single. In fact in the U.S.A. some single women have been requesting and pressing hard, even claiming as a matter of right to beget TTB. Even some people are of the view that such women should not be deprived off the benefits of new technique and should be allowed to go for TID/AID. On the other hand some are absolutely against this view and hold that they should not be allowed. We can discuss some views as follows :-

R. Alta Charo, while reviewing a book named 'Artificial Reproduction and Reproductive Rights' written by Anthena Liu says, "Why must biological connections between people create a presumption of familial relationship? And why should such a relationship trump the social relationships that we create? A discussion, for example, of the long-standing discrepancy between de facto and de jure fatherhood under English law (which held a sperm donor to be the legal, albeit anonymous, father of a child and the rearing father of a child and the rearing father to be the de facto, albeit non-legal, father) would be illuminating if it examined the political reasons for not conforming law to reality.

Similarly, in discussions concerning the definition of "mother" in the light of gestational surrogacy, why do so many commentators and judges equate "biological" motherhood with "genetic" motherhood? Not only does this overlook
the biological significance of gestation, in which maternal and fetal well-being are indisputably fused, but it buys into two underlying assumptions that deserve examination. First, it accepts male definitions of biological relationship, which must necessarily be limited to genetic linkages, as equally applicable to women's experiences. The irony of this occurring with respect to the uniquely female experience of pregnancy is inescapable. Second, it omits entirely any discussion of the possibility of viewing both women -- the genetic mother and the gestational mother -- as equally "biological" mothers, who are entitled to take full advantage of whatever primacy the law gives to biological parents.

The prospect of a family in which there are more than two "biological" parents thus opens the way for a more general discussion of why the state, or professionals who control access to technologies, should dictate the forms that a family can take. It is really the role of the state, for example, to say that a group of five adults who have pledged mutual support and agreed to take joint responsibility for three children are not a family? On what basis does the state make this judgement? It cannot be as simple as saying that the state can only recognize that which nature has created, because adoption has long been accepted as a transformation of biological strangers into a recognized family.

Perhaps one could argue that the state should recognize only those "artificial" families that are deliberately created to mimic nature. Thus, artificial insemination by donor (AID) becomes available only when there is a husband who can stand in for the missing donor. AID for single women, lesbian or heterosexual, is intolerable because it entails the deliberate creation of a family form that cannot be found in nature. But if this is so, then all single mothers should be viewed as having created illegitimate families, even if conception was by coitus rather than by syringe. The
result is a requirement that every new mother identify the child's father, even where he is absent by choice of both parties. This experiment is in fact being tried in the State of Wisconsin in the United States, but few other jurisdictions show any inclination to engage in this sort of invasive and judgemental government involvement in procreation", he further says "Why, she asks, do physicians and the state feel free to interfere with "artificial" reproduction when they are constrained from interfering with coital reproduction? This is indeed a policy question of the first order. US physicians, for example, overwhelmingly refuse to provide AID services to single women, but do not refuse to repair damaged fallopian tubes in single women who are hoping to become pregnant through coitus. Surgery is viewed as a medical treatment to overcome a medical problem, whereas AID is viewed as a social treatment to overcome a social problem. The physicians apparently feel less compelled to provide social treatments, though they rarely appear to wonder why the, experts in medicine, have the task of rationing social treatments.

Liu responds by explaining that: Artificial reproduction is ... the deliberate employment of human and technological endeavours to bring a child into being... (and) have placed the doctor in a unique position where he/she is an additional party to the pregnancy. A successful treatment brings into existence a child who would otherwise not have existed... Similarly, society, which endorses the use of artificial techniques, is also implicated in the child's existence. According to this view, it is appropriate for society to impose a degree of regulation in the case of artificial reproduction at the stage of eligibility; regulation which is neither desirable nor practical in natural reproduction.

This explanation focuses on the right of third parties to decline participation in an endeavour of which they disapprove, and as such is consistent with the
principles of professional autonomy and the use of conscience clauses that permit physicians to refuse to discontinue nutrition and hydration for PVS patients or to refuse to perform elective abortions. But the explanation does not answer the question as to why no such right of refusal exists when they are called upon to cure infertility through surgery or drugs. Why does a medically "treatable" cause of childlessness create an entitlement whereas a medically "circumventable" cause of childlessness does not?

If the answer is that a medical problem creates an entitlement to restoration of natural function, then one must further examine whether reproductive technologies really restore such function. AID for a married couple in which the husband is sterile, for example, is viewed as a "treatment" for infertility. But the married woman is not infertile. The insemination cures no one. It does, however, allow her to circumvent the socially and personally distasteful choice of adultery for the purpose of conception. Why is a single woman' decision to use insemination to avoid the socially and personally distasteful experience of a one-night stand any different? Probably the answer lies, once again, in the unthinkingly rigid way in which heterosexual, two-person marriage is defined as the sole legitimate grouping for procreation, thus making the married couple into a unitary, patient whose inability to achieve pregnancy is "treated" by providing an alternative source for gametes".71

Supporters of this view also claim that the demand of Donor Insemination by single women has been increasing day by day and that the children with single parent are satisfactorily adjusting similarly to the children having both parents.

This view has thus been expressed by some experts as follows :-
"Increasingly, single women are seeking TID. McGuire and Alexander point out that children in single head of household families are as psychologically adjusted as those from 2 parent households and that TID should not be denied to single women solely on the basis of their lack of a husband".72

However there is another view of the matter and many experts have criticised this approach of their contemporaries advocating for allowing the single women to beget TTBs. Some of the expert views against unmarried or single women begetting TTB are as follows :-

According to S. J. Behrman & Ors., "If the unmarried woman is a member of a happy and stable couple, the only objection to AID would be legal or social. Some AID teams accept insemination requests from this group of unmarried heterosexual women and some treat lesbian women. Obviously, in the latter cases AID is no longer a solution to make infertility, and very different aspects of the procedure (not to mention the social or legal implications) have to be considered: Is it reasonable to bring into the world children who are fatherless to begin with? What will their psychological development be without a father figure? What is the woman making the request trying to compensate for?" They further state, "AID should be seen as a solution for male infertility, not as a department store of spermatozoa, where one can shop for characteristics such as high IQ, developed biceps, or good looks. 'Manipulators' of sperm with the intention of creating future Nobel Prize winners or harmless blue-collar workers, ignoring even the most elementary laws of genetics, dream of making Aldous Huxley's fantasies come true. Those involved in programs offering AID should be concerned with the happiness of a future child and its parents, whatever their background. AID is a matter of medical ethics;"73
From the above two divergent views, it is clear that the issues under discussion are not yet fully and finally settled even in the most advance welfare states. Then what about India where child born to single woman is considered to be an illegitimate? Will the strong holds of traditional structure of our society encourage such liberties to become as a matter of right? Though such is not possible yet it is not impossible either. More so when there is no law to check or forbid such move, the tendency of becoming this impossible thing a possible one can not be ruled out. But anyway if this becomes possibility and single person is allowed or even otherwise such person goes ahead, then what repercussions shall it cast in the Indian society is not too far to seek.

Just imagine a plight of a child without father or mother; And further if this single person begetting TTB suddenly dies shortly after procuring the TTB; then who shall nurture the TTB?

If it is accepted for the sake of argument that the single person has a right to beget TTB; then does it not nullify this right of single person when it is argued that the TTB has the right to have both the parents? Why should the TTB be deprived of its right to have both the parents? Is it because the TTB is yet to come and enforce his/her this right or because having not yet born, the TTB is incapable of enforcing the right in question? If the TTB could express his or her desire before birth as to whether to come in this world with a single parent, where the majority of his or her counterpart is with both parents, he or she would have definitely refused to come and cried for two if forced to land.

How is it justify to crush the right of one to ensure the right of another? It is rightly questioned by some of the jurists and experts that "Is there a right to
Nothing is good or bad but its use or misuse only makes it so. Medical Science has developed the technique of AID/TID for its use and that too good use but definitely not for misuse. If AID/TID is allowed or considered as a matter of right with choice of the single person to go for a ride, it would be nothing but deliberate suicide of the right of the TTB to take birth with both the parents.

The claim of McGuine and Alexander to the effect that "Children in single head of household families are as psychological adjusted as those from 2 parent households and that TID should not be denied to single women solely on the basis of their lack of husband", is not free from challenge from all quarters and cannot be allowed to go scot-free. What psychological adjustments are they talking about? Adjustments which are imposed upon such children? Undoubtedly such children are compelled to do so. Have Mr McGuire and Alexander seen the hearts of those TTBs? If they could see, they would have definitely found the heaps of sorrows buried under such adjustments in the hearts of those TTBs whose right to call some one a "Papa" or "Father" has been snatched and snapped from the very beginning of their inception to start their journey in this world. What is this? How can they be sure that such TTBs have never desired to call some one a father (papa) when these TTBs see and hear their friends so doing? Is not it a mere curse on the TTBs who are not allowed to use the world father (papa) for themselves throughout their life? In that case and for such children a new dictionary shall have to be composed without the word father.

In India, generally the child who happens to loose his/her father commands sympathy in the society around him/her. But in case of TTB by single person such
sympathy shall be highly doubtful, instead chances of taunts and ridicule are bright.

So far there is no such report where the single males have been found demanding to beget the TTB; may be for the obvious reasons that their such desire cannot be fulfilled without the involvement of female, a surrogate mother in which case they do not remain single. But the males can also go ahead for TTB without entering into lawfully wedded life and burdening himself with the responsibilities and liabilities of the matrimonial ties. If males follow the suit, the TTB will be deprived of the love and affection of mother and such children also shall have to be provided with dictionary without containing in it the world 'mother'.

In either case, whether the single male or the single female begetting TTB, the TTB shall be deprived of the love affection, care and protection of either the mother or the father. The right to ancestral property shall reduce of half. The TTB, infact, may himself/herself also feel just a half. Why should he/she be half when he/she is entitled to be full?

Apart from this love and affection, care and protection as well as ancestral property, there is a possibility of entirely a new dimension in the field of trade and commerce. This aspect may be discussed as follows :-

For Example :-

Supposing a single businessman is in need of cheap labour. He may be a single person falling under any of the categories described above and he does not desire to bind himself in the matrimonial ties but at the same time he wants and procures TTB not one or two but in hundreds TTBs just with a view to meet the requirement of his industry for adequate number of labourers for the purpose of
his flourishing business. For that purpose if he engages so many females as surrogate mothers and instead of inseminating his own sperm get the insemination from the donor sperm and beget hundreds of TTBs so as to fulfill the target of his requirement. Can he be stopped from so doing in the absence of any prohibitory laws of the land making his such act an offence and punishable? The answer is obviously no, then what shall be the fate of those TTBs after his death?

Another Example :-

Supposing a single man having command and strong hold as a brothel taut, together with the benefit of sex selection, obtains only females TTBs to flourish his business and exports females TTBs to the countries demanding the same or even the female running brothel may also do the same. Then can such person be stopped from so doing in the absence of any law? Obvious not. Then again the Government will be burdened to control all this. To forbid such kind of immoral acts the stern law is required.

The Indian Society is rich in its traditional heritage. The line of heritage in majority is from the side of patriarchal line. The near blood relations command superiority over the other relations. Under this setup for this purpose hardly there will be any recognition to TTB. This would entail another problem of marriage as such TTBs are likely to face lots of opposition for their marriage.

Keeping in view all these problems; Socio-economic, psychological, ethical and legal; the single person should never be allowed to beget TTB in India even though the single person has the right to beget TTB. If the single person is allowed to do so, the complications and legal implications as discussed above shall beset
the society and disturb the social harmony. In India if it is allowed, the basic structure of our society shall be shattered to the point of no return. As such the right of the single person to beget TTB must be declared against the public policy and social harmony and accordingly must be totally banned like Sweden and Brazil where DI is forbidden and many other countries where DI is restricted to only married couple.

No doubt the individual has got the right to have a child but at the same time, such right should not infringe the right of the TTB to have love and affection of both the parents father and mother or mother and father as the case may be.

Therefore, it is very essential to stop and forbid any single person begetting TTB not only from the point of view of apprehension of social disharmony but also from the side of TTB who shall be deprived of the parental love and affection without any fault on his or her part. Because, if such single person is a male, the TTB shall be deprived of love and affection of the mother and if such single person is female begetting TTB in that case the TTB so obtained shall be deprived of the love and affection of the father to which otherwise the TTB would have been entitled to, thus these single people shall cause injustice to the TTB for their own selfish desire.

Therefore there should be a check on the activities of a single person for begetting TTB and it should be made an offence punishable under the law. Otherwise the number of production of TTBs under this head will create social implications and unrest creating havoc in the society and also TTB is likely to suffer, which should not be allowed to happen.
3.12 Legal implications of TTB of international dimensions: imports and exports, nationality citizenship and domicile:

"A citizen of a given state is a person who enjoys full membership of the political community or State. Citizens are different from aliens or mere residents who do not have all the rights which go to make full membership of a State".76 The involvement of third party persons in begetting TTB by the modes of donor sperm, eggs and embryos and with the help of surrogate mothers provide scope of possibilities of imports and exports of the sperm, eggs, embryos and surrogate mothers. This import and export has its own repercussions of inviting legal implications of TTB of international dimensions. These legal implications give rise to a pertinent question as to what shall be the nationality and citizenship of the TTB? Whether the nationality and citizenship shall be of the nation of domicile of the donor father or the domicile of the surrogate mother or the egg donor or the embryo donor or the recipient parents, i.e., interested / needy parties who imported the same; or the nation where the arrangement for artificial insemination and fertilization takes place; or the dwelling place of surrogate mother after the insemination or where the TTB is born?

To elaborate this aspect we can have few illustrations as follows:

(a) Supposing the infertile couple of USA imports sperm from London and insemination is done in Japan and baby is born in India. In this case four countries are involved; of which country shall the TTB have the nationality or citizenship?

(b) Supposing an infertile couple sitting in London imports sperm from India and surrogate mother from Spain fixes up the place of insemination in USA and
for the dwelling of the surrogate mother in China but TTB is born in Japan. In this case five countries are involved, of which country shall the TTB have the nationality and citizenship?

(c) Supposing the recipient parents (infertile couple) sitting in London imports sperm from India, eggs from Germany, artificial insemination and in vitro fertilization is done in USA and embryo is obtained with the help of a woman from Japan in USA where the artificial insemination and fertilization has taken place, arrange the surrogate mother from Spain who carried pregnancy to the term from the embryo obtained from the woman of Japan in USA and fix the dwelling place for surrogate mother in China from where she is shifted to Canada just before the delivery and the TTB is born in Canada but taken back to London. In this case eight countries are involved, of which country shall the TTB have the nationality and citizenship?

Let us consider and analyse the position from the Indian angle. In India we have two enabling provisions of acquiring citizenship:–

(a) Constitution of India; and

(b) The Citizenship Act, 1955.

In nutshell, from both these provisions it reveals that there are three categories of Indian citizenship:

(a) Citizens by domicile;

(b) Citizens by immigrants from Pakistan;
(c) Indians abroad;  

For the purpose of our above mentioned examples, we are concerned with only the first category, i.e. citizens by domicile. The Constitution of India lays down two conditions. First, the person must have his or her domicile in the territory of India at the time of commencement of the constitution of India and Second, such person must fulfil any one of the three conditions laid down in the article, that is to say:

- he or she must have been born in the territory of India, or
- either of his or her parents must have been born in the territory of India, or
- he or she must have been ordinarily a resident in the territory of India for not less than 5 years immediately preceding the commencement of the Constitution.

"The term 'Domicile' is not defined in the Constitution. Ordinarily, it means a permanent home, or place where he resides with the intention of remaining there for an indefinite period." Domicile is not the same thing as residence. Residence implies a purely physical fact, the fact of just being and living in a particular place. But domicile is not only residence; it is residence coupled with intention to live indefinitely in the place. "Domicile meant permanent home, and if that was not understood by itself no illustration could help to make it intelligible."

There are two kinds of domicile, domicile of origin and domicile of choice. Every person is born with a domicile of origin. It is a domicile received by him
at his birth. The domicile of origin of every person of legitimate birth,\(^8^6\) is the country in which at the time of his birth his father was domiciled.

Hence the domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance or the country of the infant’s nationality.\(^8^7\)

In the example (a) above, as per the existing provisions of Indian laws the TTB having born in India shall be entitled to the citizenship and nationality of India as he is born in India even though the persons of biological origin and the recipient parents do not reside in India. However in other two examples, (b) and (c) the donor father being from India the TTB born elsewhere is also entitled for Indian citizenship; but in presence of recipient parents the donor father has no significance in as much as the recipient father is considered the father of the TTB in U.K. Under the circumstances in case the TTB desires to have citizenship of India on the strength of donor father, the TTB shall be barred by the presence of recipient parents and in case still the TTB fights for his right as such there will be multiplicity of international litigation.

3.13 The legal implications of TTB in case of abortion or miscarriage of pregnancy undertaken by surrogate mothers :-

As we have already seen while discussing the rights and duties of the parties begetting TTBs, donors and surrogate mothers that in the absence of any law to provide remedy; the legal implications of TTB in case of deliberate abortion or miscarriage of pregnancy negligently or on medical ground of the pregnancy
undertaken by the surrogate mothers are difficult to tackle. To provide relief to the aggrieved party becomes next to impossible even in deserving cases.

**FOR EXAMPLE** :-

In a case where the surrogate mother after undertaking the pregnancy goes for abortion deliberately, what shall be the remedy to the recipient parents? If the abortion referred to above is defended on the ground of natural miscarriage or on the ground that it was essential on medical grounds, then what remedy the recipient parents are left with? Virtually of no remedy for getting TTB from surrogate mother except to sue her for compensation means to start litigation.

In another situation if the recipient parents after getting the pregnancy implanted in the womb of the surrogate mother abruptly or otherwise cancel the arrangement and rescind the agreement; where the surrogate mother is so situated that she being in advance stage of pregnancy is not able to go for abortion. Then what remedy she has? How to decide the issue and provide remedy? Under the circumstances if the TTB is delivered, who shall maintain the TTB and what shall be the status of TTB? Only she, the surrogate mother will be compelled to maintain TTB who shall remain without any status. But is it justified? All these complications are likely to rise which the law in a modern welfare state should take care. In India as we have no law whatsoever relating to TTB, so these complications will pose serious problems for the judiciary.

**3.14 The legal implications of TTB in health, injuries contractual breakdown and compensation to the victims** :-

The legal implications of TTB of very serious nature relating to the health
of the TTB in particular and the mother and others in general are apprehended when the fresh semen carrying AIDS or other venereal diseases without proper medical tests are used for begetting TTB. This may pose imminent danger not only to the health of the TTB and its mother but also likely to spread further to the other members of the society through the affected TTB and the mother. This may give rise to litigations for compensation or otherwise for criminal liabilities. Also there may be situation of contractual breakdown after knowing about the fact of insemination with sperm carrying fatal diseases, or otherwise. This will lead the aggrieved parties for demanding compensation which requires judicial consideration. Therefore, the implications of TTB in the field of individual health are serious which must be taken care of by suitable enactment to save others from becoming victims of such diseases, and also to provide compensation to aggrieved parties as well as to make physicians liable for their such acts.

3.15 The legal implications of TTB relating to multiplicity of litigations between the recipient parents, donors, surrogate mothers, TTBs and Physicians / Doctors :-

Under the various circumstances discussed hereinafore, there will be multiplicity of litigations, inter-se parties involving all or some of them. The litigations so apprehended are likely to be unlimited; requiring establishment of a full-fledged court like Family Court to attend to and decide the litigations only relating to TTB which would be an additional burden on the government. In the absence of any law or enacted guidelines, it will be very hard upon the judiciary to decide the complicated issues. Therefore, it is essential to provide guidelines by appropriate enactment.
Now we can proceed to see the procedural implications and complications for begetting TTB in the next chapter.

But before going to discuss the procedural implications and complications, we may go through the following chart containing the apprehended legal implications and complications of begetting TTB with the help of third party at a glance, so as to enable ourselves to refresh our memory in respect of the complex and serious problems which are likely to arise under various circumstances and situations affecting the status of TTB as well as social structure in India. The chart referred to above has been drawn in the next two pages, i.e. 207 and 208; the former shows the situation when there will not be any problem and the situations entailing various problems if the male spouse is not actively participating and the later shows the situations inviting problems if the female spouse is not actively participating. From this we can further imagine about the legal tangles if both the spouses are not actively participating.
"TEST TUBE BABY (TTB) AND THE COMPLICATIONS AND THE LEGAL IMPLICATIONS CHART"

IN RESPECT OF

1. MARRIED COUPLE

Both spouses capable and/or Effective.
TTB outcome of their biological origin sperm & eggs
Absolutely No danger to TTB and No Problem

Complications

- Who could be/ought to be the donor/father?
- Compensation to the donor/father
- Storage of sperm
- Maintenance of records & secrecy
- TTB Whether entitled to be share in the property of the donor/father?
- Whether donor father be bound to maintain TTB and compelled to give share his property to the TTB?

Legal Implications

- Legal Status of TTB
- What ought to be?
- Equivalent to N8B
- Whether possible in Indian Society?

Legislations and/or enactments

- Right of Couple of donors father for TTB
- Right of TTB

Mistakes or manipulations

- Deliberate malafide vested interest
- For
- Inheritance
- Succession
- Whether donor father entitled to take or claim TTB?

To know the donor (the real father)

- To compel him to be liable for the fulfillment of the rights and duties towards TTB
- Demand share of property

Natural love and affection or psychological, emotional feelings and motivations

- Natural love and affection
- To compel and/or enforce the liability in case of distress and demand share of property

To ascertain father and/or maintain line of traditional heritage in patriarchal society

If TTB desired to live with donor father whether so entitled to compel him to keep with him?
If so allowed, what shall be fate of couple (recipient parents)?
NOTES AND REFERENCES (CHAPTER-3, PART-11)

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12. Ibid., s.5, also The special Marriage Act., n. 2, s.4.


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18. Ibid., pp. 24-25.


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43. Ibid.

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77. The Constitution of India, Art. 5, also see The Citizenship Act., 1955, s. 3.

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83. Ibid.

84. Ibid., also see f. n. 43.

85. Ibid., also see f.n. 44.

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