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Jurisprudence and Legal Study of Human Cloning

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ABSTRACT

Background: Cloning is a new method in reproduction. In this method, the experts sample a core somatic cell and substitute it in an empty ovule of a core to be born a creature similar to the owner of the corporal cell and be similar to him regarding to genetic and hereditary traits. **Objective:** Following relative success of such operations on animals, the debate of probability of conducting it on human beings converted to one of the controversial topics. In this line, scientists and advocates prohibited or prescribed it based on their own special orientations. Regarding to some reasons, opponents boycotted cloning. Some others, especially Shiite jurists thought that human reproduction's probable technologies will pave the way for some innovative horizons toward future. Empowering the probability of human cloning caused plenty of legal and moral worries. Reaction against this phenomenon did not confine to national and municipal legislative realms. In the international level it has been tried to define a limitation for. As incipient necessary campaign, national and international organizations enacted the law to prohibit human cloning in a variety of documents. **Results:** Human cloning is among one of the controversies in which conducted researches does not seem sufficient. Since it contains various dimensions in positive and negative directions and besieges strong controversies about, claiming such a discussion is mandatory. This study is descriptive - analytic research. **Conclusion:** It means that books, journals, records, and related subjects perused in the libraries and internet sites and necessary sections were collected and following planning and explanation, they were scrutinized. Ultimately based on reasoning, the data were collected and preferably the conclusion was drawn.

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INTRODUCTION

Cloning which is divided in two parts, namely, human cloning and remedial human cloning is a category which has been separately discussed in bioethics. In both kinds of cloning the starting procedure were similar, however, the obtained results were completely different. It means that following human cloning procedure, a person would be reproduced who would genetically and completely be similar to the one whose active core has been utilized. While the throughput, producing embryonic stem cells, is taken from growing multi - day embryos in remedial human cloning. These stem cells genetically resemble to the person whose active core has been used and one of their property represent their flair to be converted to any tissues. It is also possible to make use of it for transplanting, having the state of emergency, and having other necessary conditions and also while being patient, following discovering these cells and converting them to organ in question. Additionally, they can be used for scientific experiments, especially investigating medicine effect (Rahimi, 2002).

Although exploiting reproduction innovative technologies in medical and genetic realms facilitate many affairs and pave the way for outstanding advancements in this discipline, but it has created plenty of questions and sometimes many problems in different disciplines including jurisprudence and law, ethics, sociology and psychology, which solving and clearing out the issues in question, necessitates interdisciplinary multi directional and extensive studies. The present study has attempted to question, display necessities, plan attitudes, their analyses and clarify the need for multidirectional and interdisciplinary research about human cloning.

The concept of cloning:

Human cloning was taken out of a Greek word and its lexical meaning means germination and reproduction (Sadi, 2002).

Cloning means that the content of ovum is pulled out and the core content of somatic cell is injected instead, the result of this change is creating zygotic or germ cell which can be converted to a complete creature.

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it should be mentioned about human cloning that natural insemination occur with combination of masculine sex cell (semen) with feminine sex cell (ovum) in most animals and plants. the number of sex cells chromosome in each living creature equals half of the number of the other cells chromosome in that creature. It means that the number of chromosome in human is 46 in which his sex cells contain 23 chromosomes each and following insemination and combination of both cores, the number will be completed. Then the embryo will be reproduced which contains 46 chromosomes. It shows that the core of both ovum and semen interfere in reproducing embryo; while ovum does not play essential role in generating embryo. Since its core has been removed, it just deals with growing embryo. On the other hand, with combining a core of 46 chromosome somatic cell inside the ovum, there is no need to semen, too. to put it in a nutshell, in cloning masculine sex loses his role in reproduction via semen and it only contains the core of cell which play a role in the characteristics of embryo. The cell donor can be male or female (Khoeini & Sohrabi, 2007).

The history of human cloning:

An American company proclaimed advanced cell technologies in November 2001 which had reproduced the first embryo of human cloning making use of transmitting core method. They stipulated that they did not intend to transfer this embryo to a woman womb (uteri) to be converted to an infant. The company hopes to produce human stem cells which can be useful in treating many diseases making use of this technique.

what shocked the world in the field in the late 2002 not only was the news about reproducing cloning embryo but the breaking news of the first cloned human being. In December 2002, Clonaide Company which was the first human cloning company based on his claim stipulated that the first cloned infant who is a daughter named Havva reproduced by this company and She has been born on December 26th in previous days. in December 2002, the second cloning daughter was born from a German woman, on January 3rd. 2003 the third cloning human who was a Japanese boy, the forth one was for a couple in Saudi Arabia on January and the fifth cloning were born on February 4th, 2003.

The last News about embryo of human cloning (not human infant) which is the most valid one too, related to researchers in South Korea who stated that they could simulate human embryo for the first time. They proclaimed this News in a conference "America science advancement association" which has been held in Seattle on February 12th, 2004. They believed that the embryo of human cloning aimed to produce stem cells which ultimately could be used in curing various diseases or substituting human organ (Hosseini Parveh, 2005).

With intensifying the human cloning controversies, a lot of jurisprudent, legal, social and rhetorical questions containing the following ones were stated:

- If a human being is reproduced in a way except marital custom, what would be the inheritance and alimony issues and what would happen to family?
- How human identity and dignity, ethics, moral and psychic state would be formed?

Drafting such questions led governments and scientific, cultural and religious associations to react against the issue. UNESCO general conference approved universal declaration of "Human Genome and Human Rights" in 25 article on twenty ninth meeting in 1997. The eleventh article of this declaration is that:

Actions and activities which are contrary to human dignity and prestige, including human cloning should not be permitted. the competent government and international organizations are invited to corporate in identifying these activities and determining proceedings which can nationally or internationally be appropriate to guarantee and observe the contained principles in the declaration (Muhammadi, 2008).

Clinton America's president requested guidance from a consulting committee to find out ethical - research aspect in biological science following the birth of "Dally". The committee recommended to him ban human cloning for research on behalf of federal government (Fokoyama, 2005).

Europe Chancellor assumed human cloning unacceptable and delegated a mission on a team of experts to investigate the issue and proclaim its prohibition to the states on behalf of the Europe chancellor (Foozi, 1999).

Russian Government did not prohibit it, however it established terms and conditions for it to observe human rights. Australian state also prohibited making use of it except for medical purposes (Saadi, 2002).

Islamic territories including Pakistan, Saudi Arabia, Egypt, Kuwait and Qatar also followed similar procedures to prohibit it (Haman, p: 245).

Religious advocates and intellectuals including Muslim intellectuals stood out against it and plenty of new ideas were criticized in this regard.

A) Human Cloning in Judaism:

Most Jewish scholars prohibited cloning (Mir Sadeghi, 2004). However a group of scholars grant an injunction in special cases as infertility and some others also took out patent against its disadvantages than its benefits (Shrabi, 2005). Based on alternative permits (patents) however the conditions display that human dignity and prestige should not be violated. Jewish scholars permitted remedial cloning since they do not assume the beginning time of human complete dignity as the time of fertilization. Based on their attitudes the prerequisite to manifest human dignity in an embryo, follows the transfer stage to womb and substitute there. In

conclusion, they believed that they could make use of cloning in remedial arenas and human dignity would be preserved, too.

B) Human Cloning in Christianity:

In Christian World, Vatican Spokesman proclaimed in an official declaration that: human cloning assumptions narrate uncontrolled insight which is free from all human and ethical criteria and standards. Vatican called this method the outcome of savage fertility which lacks human and ethical principles (Haman, p: 15).

Catholic cathedral prohibited human cloning and assumed it the violation of human dignity (Sadeghi, 2004).

Serbia Orthodox cathedral declared that human cloning would just liken the people together and would eradicate differences among human in the past, present and future (Sohrabi, 2005).

Protestants also criticized human cloning and considered it contrary to Bible teachings in motherhood and fatherhood relationships. They just attributed creation to God and human interfere in His creation by cloning. While the Protestants do not reject the possibility of cloning in special remedial cases (unfertilized female having children). They did not accord in research - oriented usages of this technology and some others accorded with it and the some others assumed it the violation of human dignity and prestige (Slami, 2005).

C) Human Cloning in Islam:

Muslim intellectuals consider remedial human cloning acceptable (Nazemi, *et al.* 2006). Some of them including Gharzavi, Egypt Mufti, in his interview with Alraeieh newspaper necessitate remedial cloning in some cases (Gharzavi, 2003). They disagree about human cloning, however. A group assumes it clandestine and a group considers it acceptable and each one adhere to various reasons to prove his judgment (Fatwa).

1. Human Cloning Based on Defenders Attitudes:

Some Islamic intellectuals resorted to various reasons to support application of this phenomenon including:

- human cloning is discovering one of the secrets of divine secrets in the human body
- legalization principle in cloning
- lack of soul replication by human being
- cloning is the best method for privation of diseases and their remedies

2. Human Cloning Based on Opponents Attitudes:

Opposite to the notions of defenders, majority of Islamic intellectuals disagreed with this phenomenon. Some of the most essential reasons will be stated in the following:

- human cloning and denying God
- Violating Divine Creation and His will
- collapsing human variations
- Defect of human dignity
- Human cloning and converting creation
- Disturbing in marriage (being couples) system
- the state of relationship taken out of cloning
- genetic - driven problems

The Opinion of Jurists to Prohibit or Permit Human Cloning:

The attitudes of Shiite and Sunni jurists about human cloning will be discussed in this section.

A) Sunni Jurists:

Since Sunni scholars permit application of cloning technique in plant life, they consensually prohibit every cloning in human life and consider it clandestine. "Majmaeh ol Boohooth al Islamieeh" depend upon Jameh Al Azhar, judged (fatwa) about the respect of it based on the official statement and requested the world nations to impede all human cloning (www.gulfpark.com.2002/10/16).

Dr. Farid Nasr, Egypt Mufti, reached respectably a consensus on human cloning and claimed that: "science should be based on credo, belief and ethics and serve human beings and also preserve religion, spirituality, generation, wisdom and properties, since disturbing each of these requirements lead human beings to corruption. He also emphasized that human cloning is not completely permitted by canon law. The knowledge can be used for organ cloning and save the life of patients (Farid Vassel, 1991).

B) Shiite Jurists:

Majority of Shiite Jurists permitted plant and animal cloning and assigning to original legalization, they consider it permissible. In remedial cloning, they permitted it. Nevertheless, the Shiite Jurists did not reach on

consensus about human cloning and judged (Fatwa) differently on the case. These judgments (Fatwa) could be classified in four sections as follow:

- definite permission of human cloning
- limited permission of human cloning
- secondary respect on human cloning
- the first respect on human cloning

The opinions of Shiite jurists will briefly be investigated here:

1). Definite permission:

Not having clear and special texts upon human cloning respect and based on the principle of “كل شيء ذلك حلال” some jurists and intellectuals assumed cloning permissible. Ayatollah Khazali gave speech on Islam attitudes conference in medical, pointing out to fear of innovative and unknown issues among some believers claimed that cloning was permissible and did not have any limitations (Khazali, 2005).

2). limited permission of human cloning:

This attitude introduced human cloning as an activity which was by itself clandestine, and considered it as an illegitimate first principle. To tell you the truth, this attitude has a few believers among Shiite jurists and not few reasons were performed to benefit from. Ayatollah Javad Tbrizi believed on this attitude (Bahr al Oluom, 1997).

3). secondary respect on human cloning:

Dependent upon available texts and except the first principle in this case, some permitted human cloning but they assumed that extensive use of human cloning creates plenty of problems; including having similar persons and encountering problems in identifying them and in a conclusion, they ruled on its case and individual permission and did not consider it permissible in macro level. Hassan Javaheri, the master, also accepted it (Javaheri, 2002).

4). the first respect on human cloning:

This perspective essentially introduces human cloning as an illegal and clandestine activity by itself and assumes it an illegitimate action. Of course, this perspective has few believers, and not few reasons were performed to benefit from and there just exists few brief judgments (Fatwa).

The United Nation proceedings about Human Cloning:

France and Germany proposed to the united nation to pass a law in a convention to fight with human recreation and cloning on August 7th, 2001. Regarding to multi-dimensional nature and legal complexities of this phenomena, they believe that the sixth committee of general assembly is completely assigned to this issue. Following the request of France and Germany, “International convention against Human Cloning”, replaced in temporary program and fifty - sixth session of general assembly. In its third meeting on 19th September 2001, general assembly assigned this issue in a temporary program to the sixth committee based on the recommendation of general assembly.

From 2002 to the next year, important events occurred which led to more public campaign to pursue the issue including the fact that the issue either nationally were tested and discussed in some countries or locally in Europe and other areas. Not only did more appropriate perception of this phenomenon lead to reach on consensus among representatives but also insisting of their own positions more widely extended, however (Doc.A/C.6/58/1.2). Hence, efforts in the sixth committee did not conclude to reduce the distance between two groups positions (Doc.A/C.6/58/L). The outcome was that reaching on consensus was not possible. Therefore, in the last day of meeting in sixth committee, 2003, Iran as a representative of Islamic conference organization member suggested to suspend the issue till 2005 (Doc.A/C.6/58/SR.23).

Finally casting a vote in general assembly, it has been decided to stop the issue till 2004. In any case, the renovated beginning process of negotiation in 2004 did not promise to form a consensus about the issue. In this year two plans were provided by Belgium and Costa Rica which pointed out to continuation of bisectional pole between two groups. In addition, what there was coordination about, pictured the necessity of casting vote in this case. The issue led to issue a manifesto by the united nation general assembly instead of setting up a convention which Italy suggested to in the last day of 2004. This suggestion was admitted. The sixth committee was held on 18th February, 2005 in order to investigate Italy proposed manifesto. Following this manifesto, member governments were called for the complete prohibition of all forms of cloning as much as contradicted to human dignity and preserving human life (Doc.A/59/516/Add).

However, this manifesto did not lead to reach a consensus among states and ultimately the sixth committee pushed to vote in order to make decision. The obtained result of casting a vote in committee enacted a manifesto containing 71 votes in favor, 35 against, and 43 abstentions. After enacting the manifesto in the committee, its

text was provided to general assembly on March 8, and it was enacted with 84 votes in favor, 24 against, and 37 abstentions (Ranjbarian & Seif, 2005).

Discussion and Conclusion:

Cloning is one of the novelty issues and outcome of technological and scientific developments in the present era which was taken nowadays into account in different societies and also rise sever debates in legal and medical science realm. Based on an inaccurate logic, sometimes remedial cloning was supposed equal to human cloning and without taking their differences and purposes into account, they ordered to prohibit cloning. for instance, it was supposed in such a way that in human cloning, the one recreated by cloning operated as spare device in order to be used by the creator while emergency state. However, supplying tissue from cloning related to remedial cloning in which stem cells of the person in question had the capability of converting to every tissue, the required organ or tissue would just be formed and the embryo did not arrive to the stage of transferring to womb and it collapsed.

It should be mentioned here that the potential and actual usefulness on human cloning is in such a way that can resolve many problems of remedial affairs. Hence, on the pretext of some unjust possible exploitation deprived human society from development of science. This does not truly mean using definite remedial human cloning permission, but it is necessary to obey meticulous principals in order to secure from probable abuse while making use of human embryo which is spending the incipient developmental stages. The requisite for it depicts all states realism in bound for explicit prohibition of reproduced and convergent cloning and cooperation altogether to achieve universal consensus and to adjust efficient application warranty in order to wish the fact that human reproductive cloning is internationally prohibited and the abuse of them is prevented. in other word, it is possible to safely regulate remedial cloning by meticulous legal - scientific investigation. In this way, one can stop abusers in order to achieve outstanding advances for human societies in order to preserve human dignity and prestige based on the right for being healthy as one of human rights.

Human cloning phenomenon is an issue which is, Willy - nilly, necessary to clarify its religious orientation and the opinions of the jurists and religious expertise should be stated in the case. Since Shiite jurists belong to principled school of thought, they can negate this discussion and judge (Fatwa) to the respect or definite corruption, instead. In addition to scientific statement and analysis of the issue, they can also discuss about law and its various states independently, and specify its legal and jurisprudence issues, to make it possible to shed light on the promising horizon for uniting Shiite intellectuals.

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