

Survey Kinship Status in Human Cloning Considering the Laws in Iran

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Abstract

Simulation, especially the human generation, is one of the most amazing technologies of Genetics. Human cloning after successful experiments in mammals' simulation and scientists' prediction regarding its possibility in the current status of human science has raised up arguments in other fields than the experimental science such as ethics, religion, and laws. There are several perspectives regarding simulation lineage in Iran's Laws: some believe there is no lineage since it's not through natural fertilization. Some others believe that if the owner of the cell is masculine, the father, and if it's feminine, the mother is simulated. And some others consider the parents owner of the cell as simulated parents and the simulated will be twin sibling of the cell's owner and the carrying mother will be "Mother Rezaee".

Keywords: human cloning, Irans laws, kinshp, genetics science

1. Introduction

After successful experiments of cloning mammals and the prediction of scientists regarding its possibility at the current state of human knowledge, human cloning has led to disputes in the domains other than empirical knowledge including ethics, religion, and law. The act of cloning in biology refers to duplication of living creatures without sex, in which case, in contrast to the sexual reproduction, the resulting creatures do not possess the features of the male and the female, but are similar versions of the initial creature from which they were created. It means that we can consider them as "Certified Copies" of the initial creature. The scientists also call the type of new creatures, which are genetically (hereditary) analogous, "Clones" or "Similar". Therefore, the process of asexual creation of a group of cells, molecules, or living creatures, which are all hereditary similar to the same parent, is called "Cloning"

In Iran there is not any legal rule regarding kinship. Of course, the scholars in law field have stated some ideas about 'kinship' and have tried to explain it.

Some claim that due to the lack of natural impregnation or the sexual cells of man and woman in some cases, the kinship claims about them is not acceptable.

But, some others believe in the presence of kinship in human clonings due to the commonsense understanding and the correctness of the application of being born in such a case.

Still others not only believe in the existence of kinship, but also consider the simulated person as the sister or brother of the cellule owner.

2. Survey Kinship Status Considering Regulations in Iran

The thing that is going to be investigated in the present Survey is a discussion of kinship, regarding simulated human beings. Different attitudes have been posed up to now about kinship in human cloning.

Before starting to talk about issues related to kinship resulting from human human cloning, a short discussion should be presented regarding the meaning of kinship and its importance.

Kinship means close intimacy and relatives' member condition and it refers to the kinship relation between a child and father. In Shiite ritual laws there has not been any definition posed and in the civil law of Iran,

following Shiat Fegh (religious scholarship), there is not any definition for kinship, but in 8th book, 'kinship' has been defined as a minor title for 'children' and articles 1158 to 1167 are appropriated to this topic. The approval of kinship is deemed highly important. "و هو الذى خلق من الماء بشرا فجعله نسبا وصهرا وكان ربك قديرا" (And he is the God who has created human being from the water of sperm and devised kinship and relation based on marriage among them and your God is able to do whatever he wants) (Forghan, 54). Therefore, in Islamic laws, there has been a specific attention to recognize the kinship and the very first right of a child conferred to it by God is kinship. One of the most challenging discussions regarding law discussions about human cloning is kinship (Izadifard & et al, 2009, 37).

To investigate about the status of simulated human kinship first it should be stated that: according to article 957 of civil law, pregnancy is considered as one of civil laws, if the child is born live (Mansour, 2007, P: 162). Now let's suppose that the results of medical researches have shown to be useful and an infant is born using human cloning method, and based on civil law it should benefit from the laws conferred. The infant is privileged by civil laws as included in civil law such as: kinship, fostering, alimony, inheritance,

The first step is to identify the intimacy and kinship of an infant because after it becomes evident, the other items peripheral to kinship should be made clear.

To identify the kinship we should refer to civil law and based on this law kinship is divided into three groups of descendants, in-law kinship, and foster kinship. But in laws in Iran there is silence about the legal status of simulated infants and also its descendants.

Regarding article 167 of the constitutional law, it has been emphasized that: "the judge should try to find the verdict for each claim in civil laws and if there is not any one, he can refer to documents in valid Islamic resources or the valid 'Fatwa' (religious order) to find out the resolution and can not avoid dealing with the claim and avoid making decisions due to the silence or faults or controversy in devised civil laws" (Mansour, 2008, P: 101).

Also the article 3 of the civil judiciary law, has been stated that: "if the related laws are not complete or clear or have controversies, or if there is not any legal law regarding the issue, the verdict can be issued by documenting the valid resources or valid 'Fatwa' and legal principles" (Mansour, 2009, P: 13).

Therefore, we should refer to the ideas posed by scholars and Islamic literates (Foghaha) to identify the simulated kinship.

Before investigating this issue, it should be stated that human human cloning has some presuppositions and this makes it difficult to determine kinship.

3. Now We Will Deal with Different Human Cloning Presuppositions Below

- 1) The first state is when a couple has tested the opportunity to have child birth but failed and decides to have a child through human cloning. In this case, the body cellule belongs to the husband and his wife does have ovum and uterus.
- 2) Second state refers to the condition through which the body cellule belongs to the husband, but there are two women having ovum and uterus.
- 3) The third presupposition is related to the state through which the body cellule belongs to the woman and she owns ovum and uterus herself.
- 4) The fourth presupposition is related to the state through which the body cellule belongs to the woman and several women own ovum and uterus.
- 5) The body cellule belongs to a man and the owner of ovum and uterus is one stranger woman.
- 6) The body cellule belongs to a man and the owner of ovum and uterus is several stranger women

The thing that can be seen in laws and Feghh as kinship refers to the natural method of reproduction that is the same as blood relation and the intercourse between parents, and the impregnation of the sexual cellules of both. Meanwhile, there is not any sexual cellule in human cloning and it seems that due to such a reason many religious scholars do not consider such an infant to have kinship.

To describe what was posed above, it should be stated that some of religious scholars and scientists believe that: the human being who is born through human cloning does not have a father (because there is not any sperm) and a mother (because there has not been sperm integration), and any brother or sister among the relatives and has been grown up in an ovum that does not belong to his mother. Instead, the mother is an alternate. In summary, it is someone without kinship. Some others believe that marriage only happens between a man and a woman and

thus they are called resources for a family. In such a way legal kinship happens when the natural father and mother of the infant are man and wife. In this case, this type of legal kinship has law effects for the children (resulted from this kinship), and the existence of such symptoms is denied regarding simulated children (Bojnourdi, 2008, P: 28).

Of course, there are some counterarguments too. Although sexual cellule is not considered in human cloning, the genetic map of the mature cellule will lack any substitute nucleus within sexual cellule and in this way it has the exact function of a sexual cellule and the information regarding all body tissues will be activated there and there is no privilege along with sexual cellule. It seems that the cellule has changed into sperm or sexual cellule. Amerinia (2007, P: 203).

With another reasoning method we can criticize lack of kinship for a stimulated child. In article 1167 of the civil law it has been stated that the child born through an illegal act does not belong to the doer. But the verdict of consensus issued by the high court in the country proved the opposite of this. The cases reported were: 1- the consensus verdict of 29th August 1994: although there is not any verdict issued in civil law in Iran about the fostering of illegal children, due to the article 167 of the constitutional law and article 3 of civil court law and the commonsense and obvious trends and the spirit of civil law and the clear 'Fatwa' on the part of Imam Khomeini regarding the obligation to donation, 'in its general meaning status', the natural bearing of a child is important and it means that the result of the natural kinship of a child to a father and a mother (legal through religion or illegal regarding the religion) would be considered as a criterion. By adulterer in article 1167 of civil law, we mean either a man or a woman who has committed it. Therefore, father and father's father, respectively, and then the natural mother of a child are responsible to afford for the child and the abandonment of this responsibility can lead to punishment.

2- The consensus verdict issued on 24th June 1997: one of the responsibilities of Identification Card issuer Organization is to record the child birth and to issue an ID card. The legislator does not make any difference between children born through a legal or illegal action.

... but in some cases that a child is born through adultery and the adulterer does not try to get an ID card, regarding commonsense and the application of what was pointed above and issue 3 and issue 47 of judicial court regulations clarified by Imam Khomeini (peace be upon him), the adulterer is considered as the commonsense father of the child and as a result of it all responsibilities such as getting an ID card are conferred to him and based on article 884 of civil law, only the heredity issue between them is denied (Ghassemzadeh & et al, 2003, P: 414).

Also among Imamieh Fogaha (Scholars in Emamieh sects), the late Mamghani, the author of Menhajolmottagin, has claimed that it is better to consider the child born through adultery and the ordinary child the same in all kinship verdicts except heredity because there is a clear difference between a child born through adultery and ordinary children regarding this issue. In other issues, it would be better to consider such a child as a son or a brother and so on and in verbal arts it is presupposed that the kinship should be considered dominant regarding a child born through adultery. Seyyed Mirza Hassan Mousavi-e-Bojnordi, the writer of the book called Alghavaedolfaghiheh, has also been apparently in agreement with such a view (Safae & Emami, 2007, P: 338).

All that has been mentioned above leads us to the conclusion that in Iranian judicial system, there is not any difference between the laws of a child born through adultery and the ordinary child and the illegal kinship is grouped in the same category as the legal kinship except in heredity.

There exists a second viewpoint regarding human cloning and it claims that the simulated person has a kinship. This view is accorded with justice more than that of the previous one because as it was pointed out only a child born through adultery lacks kinship.

The main reason of the second group to believe in the existence of a kinship is to understand commonsense. They claim that: the owner of the cellule is father if male and if it is female, is considered as the mother. Ayatollah Seyyed Mohammad Kazem Haeri stated that: "the issues related to father and mother is clear cut and due to the commonsense it is believed that father is the owner of the cellule and mother is the owner of ovum. This means that in fact the child birth is due to the sperm and ovum of the father and mother". Ayatollah Ezzaldin Zanjani answered these questions: "what is the kinship of the child simulated? Is he the son of the owner of the cellule or twin brother of sperm?" in such a way that: although the person whose perm has created the child is not a conventional father and it has been simulated, the commonsense calls the birth of it and this title is put both on the owner of the sperm and on the owner of the ovum of the one who has grown it. As it was pointed out above, this group considers the reason to call kinship as the commonsense belief as birth for the child (Izadifard & et al, 2009, P: 28).

Therefore, the belief of this group is based on commonsense. It means that if the commonsense is considered about who the father and mother of the child are? The commonsense does not doubt about this recognition and knows the owner of the sperm and ovum as father and mother of the child. But the reason to appoint such a responsibility to commonsense is due to the principal foundation that the identification of kinship references and topical issues related to it is determined by commonsense regarding issues that have not been objected by the religion or basically have been identified through the observance of the accordance of laws and regulations. Accordingly, since kinship in human cloning is among issues whose constraints have not been identified clearly in holy religion the identification of the true nature of it is carried out by the commonsense to be judged. To respond this group, it was claimed that it is acceptable that commonsense can identify and conceive such issues. But the question is that whether the identification of this issue falls within the realm of the competence of commonsense or it falls within the competence of the scholars and the specialists?

If it is claimed that there is not any difference between the two, and it can be recognized through principal fundamentals, there would arise this question: how does the understanding of this commonsense fall within the realm of novel and emerging topical issues that are reliable and documentary? (Izadifard & et al, 2009, P: 42).

The reference nature of commonsense in comparing the concepts has a long history in 'Fegh' and a detailed discussion of it can lead us to do efforts in vein. We only will refer to evidence occurred in near to our time: Imam Khomeini was someone who agreed on the institution called 'commonsense scholar' to compare the concepts and verdicts. He accepted the reference of scholars in compatibility in the most commonsense topics such as "scab" in fish let alone the complicated topics. Based on his order, a conference was held in Bandar-e-Anzali by a group of ecology scientists to investigate about the lawfulness of eating different fishes in the first half of the year 19983 and the result of the revision of scholars' ideas was that different types of fish in Khazar Lake have scab in some parts of their bodies especially on the top of their tails in the form of almond scabs. The scab does not really mean a fish is lawful to eat or not, but to achieve such an idea, the person can refer to himself or refer to the judging of the people or some scholars in different times. It should be noted that sometimes scab has clarity like other commonsense concepts and sometimes it is blurry and delicate and in sensitive and delicate issues, the idea posed by a scholar is more precise than commonsense.

Ayatollah Makarem Shirazi answered a question in this way: "scholarly (Feghi) issues revolve around commonsense issues". A question was asked about whether the identification of necessity is a responsibility of commonsense or the person encountering a problem or scholars should express their ideas? He answered: "there are different cases. In simple issues it is better to refer to commonsense and in complicated issues, scholars should be asked to pose their ideas".

Ayatollah Mousavi-e-Ardebily answered a question as follows: "kinship is a credential relationship and is extracted from the real and developmental issues such as the emergence and bearing of a child naturally from its parents and does not require religious reality, this means that commonsense credits it and religion approves it (Izadifard & et al, 2009, P: 45).

Therefore, kinship is among concepts that lack religious reality: it means that before Islam, the source of evolution of a human being was a combination of man's sperm and woman's sperm was considered as the origin of kinship. This concept has only been denied regarding adultery action in Islam as it was pointed out in details in criticizing the viewpoints of the first group above (Izadifard & et al, 2009, P: 42).

Anyway, commonsense is a way to understand realities. And the outlook of a scholar in adjusting commonsense concepts is prior to realities based on commonsense. The concept of kinship is among commonsense concepts and the scholars' understanding or the ideas of genetic engineers prove that the simulated person belongs to the owner of the sperm that is the same as parents of the person that owns the cellule.

A group of people that have claimed the simulated human being has kinship is divided into two subgroups: some consider the simulated person as the sister or brother of the cellule owner and consider the ovum as hired mother if she is not the same as the owner of the cellule. And some others have posed other viewpoints due to the multiple segregations about human cloning mentioned at the start of the present survey.

First we are going to deal with the viewpoint of the first group that considers the simulated person as the brother or sister of the cellule owner.

As it has been presented in scientific part, in sexual cellules couple nature plays an important role. This means that half of the chromosomes in a sperm belong to the man and half of it belongs to the woman's ovum. But in bodily cellules, there is no couple nature, but a bodily cellule is copied and the ovum nucleus does not play any role in genetic function of fetus construction and the child born has more than 97 percent similarity to the cellule

owner and inherits almost a reservoir of genetic information of the cell owner. The more interesting point is that even regarding the age, the fetus scholars do not differentiate between cell owner and colonized child. It means that unlike sexual cell representing that if the sexual cell owner is 25 years old and bears a child, the difference is 25 years it is not the case in bodily cell. This means that if the nucleus of a 70 years old man is taken and simulated, the infant born will be 70 years old at the start of the birth.

The reason to say that parents own the cell are considered as the parents of human cloning and cell owner and simulated person are considered as twins is that the parental kinship is resulted from coupling and the integration of genetic reserves. In human cloning, coupling is approved indirectly and with an intermediary step, but coupling directly is completely denied. In other words, the simulated child is more than 97 percent similar to the cell owner due to exploiting genetic characteristics. They are even the same regarding the age. On the other hand the simulated person is made of cells resulted from the coupling of parents of the cell owner. This means that the bodily cells of each person inherits the characteristics and genetic information of their parents and it shows that the so called simulated child has the half of the data of the father owner of the cell and the other half has been inherited from the mother of the cell owner in equal extents. There is more than 97 percent of the genetic information of the cell owner present. The cell owner and simulated child are considered both brothers and sisters because both are formed by sexual cells of another woman and man who are considered as their parents (Izadifard & et al, 2009).

The proponents of this theory consider the mother owner of the ovum as the 'hired mother' for the state of human cloning in which the owner of sperm and the ovum are two separate women.

They consider the woman owner of the ovum as the 'hired mother'. As if a woman has milked a child of another woman several times as a hired mother. In this case, since the child has been kept in ovum and the child has been fed with the woman and has grown, it can be stated that she has been the child's hired mother. It should be noted that hiring results in a mother and infant relationship in certain states among an infant who is fed by milk and the woman who milks the infant in such a way that they become intimate because of kinship. Now, can't we consider a mother who has kept a fetus for 9 complete months in her uterus as a hired mother in comparison with the laws accepted in Shiite sect? Especially because in hiring there should be milking and feeding the body of the infant, and this would be true regarding the woman who has grown an infant in her uterus. Undoubtedly, there is such a priority here. Child nursery for 9 months is much more than the role of one day and night or 10 or 15 times milking a child. The proponents of this theory consider the owner of uterus as the hired mother and it means that the child becomes intimate regarding the kinship with only this woman because her uterus has been a resting place and the feeding location and growth environment for the child but is not intimate to her other children and can get married with any of them.

Ayatollah Makarem-e-Shirazi answered a question as follows: since the titles such as father, brother, and sister can not be applied for such a person, the titles such as brother and sister are not considered as kinship titles for the child, but the woman whose uterus has been a place for growth and development for the child is considered as a hired mother who has fed and there has not been any fetus in this process. In such a case, he can not get married with that mother because she is like a hired mother since the flesh and skin of that woman have been mixed with the child's. Therefore, they are not intimate unless for more caution (Izadifard & et al, 2009, PP: 49-50).

To define the priority of analogy, it should be stated that: we mean an analogy through which the reason for the verdict in peripheral is stronger than the main such as the statement of 'alas!' to parents that has been deemed as something to be abandoned and the verse requires to be followed because parents should not be tortured. This reason is stronger and more in insulting and thus insulting parents would be considered as a sin either (Mohammadi, 2011, P: 196).

Some others have a different idea regarding the approval of kinship for the simulated person regarding a state of human cloning through which the owner of the uterus and the owner of the ovum are two distinct women.

Undoubtedly, children who are born through the use of human cloning are considered as twins whose parents are the same but there is a debate regarding that what would be the kinship relation between this child and the woman who has grown it in her uterus and was not formed of her own ovum (holder mother)?

It can be said that: the holder mother is the religious mother not the owner of the ovum because of the Quranic verse that stated: "الذين يظهرون منكم من نسائهم ما هن امهاتهم ان امهاتهم الا اللاني ولدنهم" (Mojadeleh, verse 2) (Those who think their wives are the same as their mothers, be sure that they are not their mothers. Their mothers are those that have born them) (Haeri, 2008, P: 39).

Although this verse speaks about similarity and the rejection of the ideas of those in illiterate era of Arabs who thought wives to be as their mothers and avoided to get married with them, but it apparently refers to the fact that a woman who bears a child is considered as his mother (Seyyedi-e-Bonabi & Rahimpour, 2007, P: 69).

Therefore, some scholars such as the writer of the book entitled 'Jawaher' (the Jewelry), have considered being born from a woman as a symptom of kinship of a child to the mother (Sadeghi, 2005, P: 84).

This idea is not complete because the kinship mother has a clear criterion regarding the wise men and it refers to the fact that the fetus is gained from the ovum of a woman and this criterion is not present in human cloning for the woman who owns ovum. The verse does not deny this issue and if we refer to this verse we can clarify it. When a man thinking of the similarity tells her wife: you are like my mother to me and calls her 'mother' and considers intercourse with her as a sin, the Great God rejects his idea with this verse: Those who think their wives are the same as their mothers, be sure that they are not their mothers. Their mothers are those that have born them (Bojnourdi, 2008, P: 30).

In the important debate on rental uterus there is the imagination that due to the verse 2 of Mojadeleh Surah, they consider the owner of the uterus as the mother not the woman that owns ovum.

The important point here is that in rental uterus, which of these two relationships could be considered as the criterion for mother and child relationship. Regarding the medical knowledge approved, the origin of emergence and the builder cellule of a fetus is the mother and ovum of a woman and there is no doubt about that.

According to the recent medical data, the uterus of a woman can play several roles in feeding, growth, ... of a fetus. But we can not find in any medical book that the woman's uterus plays the initial role in emergence and even in evolution of a fetus. Thus, in fact the child is a product of a woman's ovum. Therefore, the criterion to be a mother regarding commonsense is the same as being a father. Commonsense considers a woman as mother who has a role in the very first stage of the creation and the emergence of a fetus. Of course, this theory is compatible with the outlooks of most of Shiite scholars such as Imam Khomeini. Also some of scholars in Sonnah caste such as Mostafa Zargaa and Yousof Gharzavi agree with such a viewpoint (Fouladian, 2009, P: 123).

In addition to these cases, we encounter with some main problems regarding some of human cloning presuppositions. For example, in third presupposition of the items mentioned for human cloning at the start of this section, the fact that the bodily cellule belongs to a woman and the ovum and the uterus belongs to the woman herself or in fourth presupposition that the bodily cellule belongs to a woman but the ovum and uterus belongs to several women, there would be surely a father for the simulated child in all these cases and this would be one of the challenges posed in religious (fegh) section of this article.

Also in fifth presupposition where a bodily cellule belongs to a man and the owner of the ovum and uterus is the same woman and some different ones, due to the lack of the coupling relationship between these two there would be some problems in kinship of the simulated child. Accordingly, in sixth presupposition where the bodily cellule belongs to a man and the owner of the ovum and uterus is several different women, there would be the same problems.

4. Conclusion

This research showed that a considerable number of ethical reasoning and even religious logics to avoid or approve this technology is related to the imagination of human beings' human cloning with all those scientific ambiguities.

We can criticize an issue or approve that when it would surely happen. Meanwhile, scientists are still in doubts about human human cloning and also doubt about the safety of the simulated child. So, such an idea can not be completely approved or rejected.

It can not be approved because in current human cloning status, the human knowledge has not been able to guarantee the safety in animal human cloning and it can not be applied in human being. Also it can not be rejected because we can not put obstacles in front of scientific advances for any reason.

Of course, it should be noted that the complete scientific success in this field can not be considered as a license to do so, because human cloning is not a solely scientific problem, but it has a close relationship with psychology, sociology, and law.

It should be precisely investigated that if one day it becomes possible to do human human cloning, would the science branches mentioned let this action be carried out.

But regarding the status of simulated kinship, as it can be observed, there are plenty of ideas expressed regarding

the identification of kinship and it seems that the reason for all these different ideas and the different opposing viewpoints lies in the fact that each of these ideas try in a way to approximate the relationship between bodily cell owner and the simulated infant to the kinship intimacy and it is an incorrect conception. Because as it was explained before the criterion for kinship intimacy, is the impregnation of sexual cellules and there is not any sexual cellule in human cloning. Additionally, the criterion of kinship intimacy is compatible with natural methods not with the new method of human cloning.

To determine the type of relationship and intimacy between cellule owner and the simulated child, we need to devise a new legal system that has not been existent up to now and of course it seems a problematic issue.

This new law establishment can be considered in a way that the lawyers divide kinship intimacy into two sections as:

- 1) The kinship relation resulting from the impregnation of sexual cellules
- 2) The kinship relation resulting from bodily cellule

Of course this is a type of theory and can be rejected or approved. The reason to oppose that bodily cellule can not be categorized as the blood relationship and kinship intimacy and the reason to approve that when a bodily cellule is placed in a sexual cellule without any nucleus, there is not any differentiation between fetus or sexual cellule. Anyway, we should notice that the factor and the cause of creating a simulated child is the cellule owner and thus the existence of a type of relationship and integration between these two seems inevitable.

We should not ignore simulated child due to the novelty of the human cloning and belief in the natural method of reproduction and deprive him of the laws in the society if he is born. It seems that the announcement of a simulated child as someone without kinship is to avoid the problem; meanwhile we should try to express our ideas about this issue to avoid such differences in opinions. The creation of a new term to refer to the type of the relationship between cellule owner and the simulated child does not seem an absolute necessity because terms are conventional and credential and it is the human being that creates them.

Thus, we can use the same terms of father or mother for this type of relationship either.

It is better to accept human human cloning (if the simulated child is completely safe regarding medical science) in conditional and constrained status; for example, we can approve that only those couples can use human cloning that suffer from infertility and are interested in having a child who can have a biologic kinship with them because this is not possible through fetus donation. In this case even it does not seem that the legal status of such a child encounters any problems. Only in this case we can avoid frequent controversies in ethical, religious scholarship, and lawful issues.

In other words, maybe the only reason to issue a human cloning license would be to help infertile couples regarding some conditions and this is the true resolution.

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