

Cloning Phenomena: Appraising Legal and Bioethical Issues in The Islamic Jurisprudence

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Abstract- Genetic engineering is certainly new speculative frontier and one of the academic areas that kindle tremendous concern and anxiety among Muslim communities world over. In particular, when in 1997, the first cloned sheep called Dolly was produced in Scotland using mature cells of mammary glands (somatic cell nuclear transfer, SCNT), the idea of cloning became both interesting and hot debate among Muslim jurists. Without prejudice to the contentious issues, this scientific innovation of cloning hold prospect of remedying a number of maladies that afflict our civilization such as Parkinson's disease, diabetes and Alzheimer. But then, some socio-legal and ethical issues need to be addressed as the scientific feat is susceptible to abuse and illegality. So far, the recent announcement of the creation of genetically edited babies (in China) was globally received with shock and uneasiness. The Islamic world is part of the globe and as such, some Islamic scholars, *fuqaha*, and clerics (*ulama*) see the whole issue beyond apocalypse and afar the blasphemous action of scientists and researchers 'playing God'. They got engaged in jurisprudential deliberations that resulted to layers of *fatwa* on the issue. This paper explore the clear and conscience discussions on the topic. The focus is on the legal status of reproductive and therapeutic cloning in the context of the Islamic jurisprudence. The paper seek to find how the orthodox law accommodate, if ever, developments and progresses in medical sciences.

mathematics and intellectual property. It is equally controversial because of its entanglement with politics, theology, ethics, social science and law. The case of *Davis V Davis*¹ is one of the *nobilis* cases in the English law that borders on embryological birth and vitro fertilization without normal pregnancy. Of course, the case in its entirety is not centered on cloning, but it brought to light some legal jurisprudence on procedures similar to cloning technology. The plaintiff in the case sued Junior Davies over control of frozen embryos with the intent to have them transferred to her own uterus in a post-divorce effort to become pregnant. Junior Davis objected to that and the court of appeal and Supreme Court of Tennessee respectively affirmed his constitutionally protected right not to beget a child where no pregnancy had been made. Then came the ruling of the Court of Appeal on Human Fertilization and Embryology Authority in the *milliarium* case of *ProLife Alliance V E. S.*² *Cell Resources*. The court overturned the decision of the lower court by maintaining that the controversial method of cell nuclear replacement (CNR) can be regulated by the government.

This paper explore the *fatwa* literature on this scientific innovation. Citing hypothetical cases, it focus on the clearance of the mists surrounding the complication and complexities of the subject of cloning. The end result is the review of bioethical and jurisprudential aspects of Islamic law.

I. INTRODUCTION

The subject of genetic engineering, including human cloning, is of special concern to Islamic jurisprudence, *fiqh*, because it relates to the institution of family which is a consecrated area in Islam. There are several expressions of declarations, *fatwas* (rulings on a point of Islamic law) and resolutions by a number of Islamic scholars, organisations and independent Islamic bodies regarding the religious stance on the issue. However, this subject-matter of cloning, though new, is conceivably the most dimensional and controversial area in science and technology; dimensional in the sense that it enmesh the extent of science, technology, medicine, medical jurisprudence, legal jurisprudence, physiology, agriculture, horticulture, genetic engineering,

II. MEANING AND APPLICATION OF CLONING

Cloning, *literatim*, is the technique of making an identical copy of something. The very word 'clone', which was derived from the Ancient Greek word '*klōn*', was originally used to mean 'twig', referring to the process whereby a new plant can be created from a twig.³ Originally the spelling of the word is '*clon*' until the twentieth century when the final "e" came into use to indicate the vowel is a long "o" instead of a short "o". The coining of the word in the modern sense was attributed to an American plant

¹ 8 42 S. W. 2d 588, 597 (Tenn. 1992).

² The Guardian, Government wins Human Cloning Court Challenge, < www.theguardian.com/s > @ 11/4/19.

³ Nabavizadeh S. L. et al, Cloning: A Review on Bioethics, Legal, Jurisprudence and Regenerative Issues in Iran, World Journal of Plastic Surgery, < <https://www.ncbi.nlm.nih.gov/articles> > @ 12/4/19.

physiologist, Herbert John Webber.⁴ Scientifically, it refers to asexual replication of organism, a kind of the process of creating an exact copy of a biological unit.⁵ In biology, it is the process of producing similar populations of genetically identical individuals that occurs in nature when organisms such as bacteria, insects or plants reproduce asexually.⁶ The word 'clone' itself denotes to any cell or individual which is identical to another. Thus a copy could be made of someone's DNA and genetic makeup because every single bit of DNA could be identical.

Cloning can happen naturally, as in the case of identical twins. In this case the individuals had developed from one fertilized egg. Again, honey bees propagate by cloning as the queen bee mates once during her life and the eggs propagate in the queen up to thousands of eggs that are further hatched into bees. Another instance is the asexual reproduction of bacteria, plants, fungi and algae. A water hyacinth is capable of multiplying itself into manifold copies. In fact, many trees, shrubs and vines form clonal colonies naturally. The cloning can also be artificial as in the case of Cellular Cloning which involved manipulation procedures that sees a cell being cultured to produce single-celled organisms with the exact genetic content of the original cell. Dolly,⁷ the sheep is an example of artificially cloned mammal. Several clones had been produced in the lab before Dolly, including fogs, mice and cows, which had all been cloned from the DNA from embryos.⁸ Cloning in this case involve replacement of the egg nucleus of an organism with the donor's nucleus. This nucleus contains unique genes of the donor. The procedure involves removing the nucleus of a somatic cell and inserting it

into an enucleated or unfertilized egg cell. Unlike natural reproduction, wherein the egg contains a combination of genetic material, this egg which grows into an embryo contains only the donor's gene.⁹

There are three types of artificial cloning, namely, gene cloning, reproductive cloning and therapeutic cloning.¹⁰ Generally, gene cloning (otherwise called DNA¹¹ cloning) is used to produce copies of genes or segments of DNA,¹² reproductive cloning produces copies of whole animals,¹³ whilst therapeutic cloning produces embryonic stem cells for experiments aimed at creating tissues to replace injured or diseased tissues.¹⁴

III. POTENTIAL USES AND BENEFITS

Cloning technology has the potential of revolutionizing the field of medicine by providing novel treatments for the maladies

⁴ Webber (December 27, 1865-january 18, 1946) was a professor emeritus of sub-tropical horticulture and the author of several publications on horticulture. He was the first director of the University of California Citrus Experiment Station. He was also the third curator of the University of California Citrus Variety Collection

⁵ (Biology Online Dictionary < dictionary <https://www.biology-online.org/dictionary/cloning>> @ 12/4/19.

⁶ *ibid*

⁷ Dolly is the first mammal to be cloned from an adult cell. To produce her, scientists used an udder cell from a six year old Finn Dorset white sheep. They injected the cells into an unfertilized egg cell of a Scottish ewe which had had its nucleus removed, and made the cells fuse by using electrical pulse. Dolly was so named 'Dolly' after a famous countryside singer Dolly Parton because the cells cloned to make her were from a mammary gland cell, and Parton is known for her ample cleavage.

⁸ In the late 2000, scientists cloned 8 species of mammals. In 2003, the first cloned mule was produced by the American scientist. In 2005, the first cloning of a dog called Snoopy was carried out.

⁹ The Legal and Ethical Issues of Cloning that makes it Controversial, ScienceStruck, <<https://sciencestruck.com/ethical-issues-of-cloning>> @ 11/3/19.

¹⁰ Cloning Fact Sheet, National Human Genome Research Institute < <https://www.genome.gov/about-genomics/fact-sheets/Cloning-Fact-Sheet>> @ 11/3/19

¹¹ DNA is short of deoxyribonucleic acid. It is the hereditary material in humans and almost all other organisms, mostly located in the cell nucleus.

¹² The procedure consists of inserting a gene from one organism, often referred to as "foreign DNA," into the genetic material of a carrier called a vector. Examples of vectors include bacteria, yeast cells, viruses or plasmids, which are small DNA circles carried by bacteria. After the gene is inserted, the vector is placed in laboratory conditions that prompt it to multiply, resulting in the gene being copied many times over.

¹³This technique involve the researchers removing a mature somatic cell such as a skin cell, from an animal that they wish to copy. They then transfer the DNA of the donor animal's somatic cell into an egg cell, or oocyte that has had its own DNA-containing nucleus removed. Researchers then add the DNA from the somatic cell to the empty egg in two different ways. In the first method, they remove the DNA-containing nucleus of the somatic cell with a needle and inject it into the empty egg. In the second approach, they use an electrical current to fuse the entire somatic cell with the empty egg.

¹⁴ Therapeutic cloning is achieved by creating embryonic stem-cells in the hopes of treating diseases such as diabetes and Alzheimer's. The process begins by removing the nucleus (containing the DNA) from an egg cell and inserting a nucleus from the adult cell to be cloned.

of Alzheimer's,¹⁵ Parkinson's,¹⁶ Huntington's,¹⁷ Multiple Sclerosis,¹⁸ diabetes,¹⁹ heart diseases,²⁰ infertility, Myocardial Infarction,²¹ series of genetic abnormalities and hereditary ailments.²² Equally, the feat could be used to propagate genes for the creation of human parts. For example it can be used to reproduce the amputated limbs and replicating them to culture and replace the destroyed organs such as liver and heart. Such cloned limbs may have full genetic adaptation with the recipient individual who is the donor of the stem cells. This kind of cell or organ transplantation is within the area of regenerative medicine which is helpful even in the case of bone marrow transplantation. Regenerative medicine also allow autologous transplantation of stem cells, and it help in reducing the risk of organ transplant rejection by the recipient. For instance, in liver diseases, a new liver may be grown using the same genetic material and it then get transplanted after the removal of the damaged one. In the area of agriculture, the technology is expedient in replicating and propagating plants and animals.

IV. CONTEMPORARY LEGAL FRAMEWORK

In the conventional English legal system, there is little presence of legislation in the area of cloning. In fact since the creation of Dolly the sheep there is no Common Law legal framework regarding the regulatory issues and patentability of human cloning. Within the US, the federal laws circumvent the matter and merely focus on research funding. That, perhaps is the reason why in the case of *Missourians Against Human Cloning V Carnahan*²³ the Missouri Stem Cell Research and Cares Institute took the government to court over proposal to amend the Missouri Constitution so that they may legally be allowed to undertake cloning research.

the general position of the law in the US regarding cloning, in the meantime, is therefore prohibition. Most of the countries worldwide also places ban on it. The only legal area that touches much of cloning is patent law. Indeed there are patents for some biological processes such as stem-cell lines,²⁴ but none is available for human cloning. Even Dolly the sheep which enjoyed publicity

as the first mammal cloned from an adult cell was denied being patented by the US Court of Appeal for the Federal Circuit.²⁵ In Europe, despite the existence of the law that established Human Fertilisation and Embryology Authority (which however was drawn up when the technique of cloning that led to the creation of Dolly was not much in use), the Directive on the Legal Protection of Biotechnological Inventions does not allow the patent of human body. Article 5 of the Directive clearly states that the human body and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, will not be subject to a patent. Article 6 further consider human cloning to be an unpatentable invention.

At global level, there is a non-binding 'United Nations Declaration on Human Cloning', passed by UNESCO in March 2005, which states: "Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted." Prior to that, there is the International Declaration on Human Genetic Data of 2003 and the International Declaration on the Human Genome and Human Right. The articles of these two declarations prioritized preservation of human dignity in scientific researches. There is also the European Convention on Human Rights and Biomedicine (Strasbourg) which proposed concerns with this scientific phenomenon and the experimentation on human. The UN, therefore, had not yet taken a firm stand on the issue, except that in the deliberation of 2003, member states have attempted voting for total ban on reproductive cloning. At the moment, the legal framework of cloning could be said to be characterized by medical ethics and professional rules of practice all of which are short of legal rules.

V. FRAMEWORK OF ISLAMIC REGULATION

The juridical status of cloning had been subject of various theological *fatwas* which in turn are extrapolated from the sources of Islamic law, namely, Qur'an (revelation, word of Allah), Hadith/Sunna (authenticated traditions on the sayings or actions of the prophet Muhammad, SAW, serving as guidance to humanity), *ijma* (consensus of opinion by the *ulama*), *qiyas* (analogical

¹⁵ Alzheimer's disease is associated with genetic factors which could be cured through embryonic stem cell cloning. Former American president, Ronald Reagan was said to have suffered the disease and that prompted the former first Lady Nancy Reagan to urge the then US president Bush to reconsider his policies banning the therapeutic cloning and embryonic stem-cell research.

¹⁶ Researchers had successfully used cloned cells from mice to treat a mouse model of Parkinson's disease in related animals.

¹⁷ Huntington's disease is an inherited condition in which nerve cells in the brain break down over time.

¹⁸ This is a disease in which the immune system eats away at the protective covering of nerves.

¹⁹ Human cloning has been used to create stem cells which could cure diabetes by triggering insulin production. For the first time, scientists have successfully replaced the damaged DNA of a type 1 diabetes sufferer with the healthy genetic material of an infant donor.

²⁰ Human tissue cloning has the prospect of treating heart diseases.

²¹ This is a blockage of blood flow to the heart muscle.

²² Cloning techniques could be combined with genetic engineering to cure hereditary disease. For example, couples who did not want to pass on a genetic disease could first produce an embryo through in vitro fertilisation. The embryo would then be screened for the genetic abnormality.

²³ WD 66495, WD 66496.

²⁴ See US Patent 8647872.

²⁵ The court ruled that "Dolly's genetic identity to her donor parent renders her patentable."

reasoning), *istihsan* (juristic preference), and *maslaha* (public interest). Islamic legal theory (*usul*) dictate that these sources are the vetting parameters in declaring whether or not an action is permissible, prohibited, obligatory, commendable, discourage or detested.

All the jurists are unanimous in permitting cloning that happen in nature. Numerous vegetables and fruits are genetically designed by Mother Nature to clone by themselves. In addition, for years farmers were known to traditionally clone fruit trees, by cutting a cleft in one tree and inserting a branch from another. This and similar practices are held to be permissible in Islam. A hadith was reported by Musa bn Talha who reported from his father that Allah's messenger happened to pass by the people who had been busy in grafting the trees. Thereupon the prophet said 'if you were not to do it, it might be good for you.' So the people abandoned the practice that season and there was a decline in their yield. Afterwards the Prophet happened to pass by them again and, noticing the decline in the yield, he asked 'what has gone wrong with your trees?' They said 'you said so and so.' Thereupon he said 'if there is any use for it, then do it, for it is just a personal opinion of mine, and do not go after my personal opinion. But when I say to you anything on behalf of Allah, then do it, for I do not attribute lie to Allah.' (Emphasis supplied).

But then again, jurists have different verdict when it comes to human cloning, predicating their decisions on numerous reasons that include the question of quality of life of the clone individual. In Islamic philosophy, human beings are made up of matter and spirit. The soul, *ruh*, of individual gets inserted into him during fetal development. There is therefore 'one' soul for every fetus. As a result, a cloned individual will only be having the biological elements of human being. He will be devoid of the soul, *ruh*, which is of spiritual importance.

Yet, considerable number of jurists made a stand of prohibiting cloning on the basis of it being a means of weakening religious beliefs, changing God's creation, violating human dignity, disturbing family life, and bringing heritage and lineage regulations into disarray. Therefore, they hold cloning even for partners living together to be illegitimate. A Saudi Arabian *Salaf* scholar Muhammad ibn Saleh al-Othimin²⁶ was so stern in holding to the prohibition of cloning that he advocate for Islamic penalties to be executed in relation to those who involved themselves in such

scientific procedures. Those that hold unanimity on this

²⁶ Al-Othimin (9th march 1925-10th January 2001) is described as 'a giant within conservative *salaf* Islam.

²⁷ Damad, S. M., Human Cloning from the Viewpoint of Islamic *Fiqh* and Ethics, Asian Bioethics Review, NUS Press Pte Ltd, Vol. 3, Issue 4, December 2011 pp. 342-350

²⁸ Taleb R., A Critique of Islamic Argument on Human Cloning, <[@12/4/19](https://www.scribd.com/document/248894182/A-Critique-of-Islamic-Argument-on-Human-Cloning)>

²⁹ Abdolrahman Abdollah Avazi [1997] *Islamic Approach on Some Contemporary Medical Problems Symposium, volume 2 Cloning, Dar al Beiza*, 512,

ruling of prohibition are institutions that include *Rabiatu al-'Alam al-Islami* (based in Mecca, Saudi Arabia), Muslim World League, Islamic Jurisprudence Council of the Organisation of Islamic Countries, Islamic Medical Association of North America, Islamic Organisation of Medical Sciences, the *Majma' al-Bohus al-Islamiyya* (Conference of Islamic Discussions of the Al-Azhar University in Egypt),²⁷ Academy of Research of Al-Azhar, Islamic Research Council, *Majma Fiqh al-Islam* (Islamic *Fiqh* Academy), *Jamaah Kibar al-Ulama* (Grand Assembly of Scholars in Egypt), European Council for *Fatwa* and Research and Council of Islamic *Fiqh*.²⁸ Furthermore, a seminar held in Morocco in 1997 ended with several recommendations, one of which is calling for the "prohibition of human cloning by the transfer of stem cell of body to the nucleus-free ovule."²⁹ The health Ministers of the Gulf Cooperation Council, while ascribing to this view, have even called cloning as the biggest crime that is irreconcilable with medical ethics.³⁰

A class of jurists placed prohibition on cloning because it is liken to abortion since it is hinged on the procedure of destroying human embryos and fetus to obtain and culture stem-cells. Yet other jurists analogized it to ethnic cleansing, which also is prohibited in Islam. The *ratio* used here is that, human cloning may involve scenario whereby a woman somatic cell's nucleus gets inserted into another woman's de-nucleated egg resulting into predominance of a certain genotype thereby reducing the percentage of another.

Some Islamic scholars, that include Muhammad Rafat Uthman, of the Sharia department of Al-Azhar University, moreover hold the view that cloning is subsumed under Lesbian and gay interactive activities, as such it is palpably prohibited. Reproductive cloning, in particular, has the prospect of helping LBGD community³¹ to have genetically related children without the use of donor eggs or sperm, as the case may be (though sometimes a surrogate would have to carry the clone).

Another structured analogy places cloning on the same level with adultery because it may embroil two marital-unrelated persons of opposite sexes copulating. The scenario may be that of a man's somatic cell's nucleus being inserted into denucleated egg of a woman not wedded to him. On this basis, human cloning was prohibited.

Notwithstanding the preceding juristic arguments, the grand Imam of al-Azhar and former president of al-Azhar University,

³⁰ Health Ministers of Persian Gulf Cooperation Council countries: Human Cloning is a Crime, available at www.emi.ae

³⁰ Abdolrahman Abdollah Avazi [1997] *Islamic Approach on Some Contemporary Medical Problems Symposium, volume 2 Cloning, Dar al Beiza*, 512,

³⁰ Health Ministers of Persian Gulf Cooperation Council countries: Human Cloning is a Crime, available at www.emi.ae

³¹ LGBT is an initialism that stands for lesbian, gay, bisexual and transgender people.

Ahmad at-Tayyib³² hold the view that therapeutic cloning was condoned by the Sharia. As a matter of fact, other prominent scholars, such as Muhammad Sa'id al-Hakim,³³ one of the four grand Ayatollahs of the Hawza of Najaf, are in support of this holding. However, famous Egyptian theologian Yusuf al-Qaradawi,³⁴ took a more critical posture on therapeutic cloning, pleading for allowing only those forms of cloning by which organs can be cultivated "directly" in the guest organisms, without taking a "detour" by way of creating a human clone. Similar arguments are advanced by Shi'ite scholars like Hasan al-Jawahiri from Qom in Iran, who believes that only those forms of cloning should be permissible that do not entail embryo destruction, which, in view of the current state of research in this field, amounts to a complete ban on this technology.

A pivotal point of argument among the jurists is whether cloning technology is posing challenge to the basic tenet in Islam that God is the sole creator of everything. An Egyptian professor of Islamic theology and philosophy, Hiasan al-Sha'fi'i detailed out the philological meaning of the word 'creation' (*khalq*) explaining its theological and linguistic connotations. He elucidated that linguistically speaking, *khalq* has two main denotations. First, it means measuring or determining the proportion of something and then acting accordingly. Second, it means giving a form or shape to a substance already created by God. Creation in either meaning, al-Sha'fi'i argued, can be attributed to God or to creatures. Thus, theologically speaking, creation means bringing something into existence from the state of nonexistence without any external help. The second theological meaning is breathing life and soul into creatures. In these two theological meanings, creation is exclusive to God.³⁵ Sha'fi'i then conclude that the cloning of Dolly cannot be categorized under either of the two theological meanings of creation. This is because it is not the researchers that breathe life or soul into Dolly and its likes.

VI. CLONING AS A CHANGE IN ALLAH'S CREATION

There are numerous verses in the Holy Qur'an that reflect the facts about human creation by God. They include:

³² Al-Tayyib (born on 6th January 1946) is a Grand Imam of al-Azhar and former president of al-Azhar University. He authored *Al-Janib al-naqdi fi falsafat Abi al-Barakat al-Baghdadi*.

³³ Al-Hakim (born 1st February, 1934) is a senior Iraqi Twelver Shi'a Marja.

³⁴ Qaradawi (born 9th September 1926) is the chairman of the International Union of Muslim Scholars and is best known for his program *Al-Shari'a wa al-hayah* broadcast on Al Jazeera. He is also one of the founders of IslamOnline, website founded

³⁵ Ghaly, M., Human Cloning through the Eyes of Muslim Scholars: The New Phenomenon of the Islamic International Religioscientific Institutions, ijihadnet.com/wp-content/uploads/Ghaly_cloning_Zygon.pdf @ 12/3/19.

³⁶ *Surat Rum*, Chapter 30:27

³⁷ *Surat Nisaa*, Chapter 4:1

It is He Who begins (the process of) creation; then repeats it; and for Him it is most easy. To Him belongs the loftiest similitude (we can think of) in the heavens and the earth: For He is Exalted in Might, full of wisdom.³⁶

O Mankind! Reverence your Guardian-Lord, who created you from a single person, created, of like nature, his mates, and from them twain scattered (like seeds) countless men and women; reverence God, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for God ever watches over you.³⁷

The verses above imparts that Allah had ordain human being to live in harmony with nature, and as such, since human cloning is inconsistent with the pattern of creating things in pair as is mentioned in the Qur'an, then it stand as being prohibited. In fact, generally, cloning is seeing by considerable number of jurists as an affront to the Islamic belief that only Allah is the Creator of life and its various forms and that human beings cannot act as "God". The technology and the procedure involved has therefore attracted condemnation as the works of evil. The proponents of this position includes Syrian professor Wahba al-Zuhaili³⁸ and Dr. Nasr Farid Wasil, the former Mufti of Egypt.³⁹ This is on the basis of the following Qur'an verses where the devil vow to seduce people into changing Allah's creation:

God did curse him, but he said: 'I will take of Thy servants a portion marked off; I will mislead them, and I will Create in them false desires; I will Order them to slit the ears of cattle, And to deface the fair nature created By God. Whoever, forsaking God, takes Satan for a friend, hath of a surety suffered a loss that is manifest.'⁴⁰

A Lebanese Shi'ite cleric, Hussein Fadlallah,⁴¹ however had argued that the above verse do not apply in cloning issue, since cloning does not constitute a change in creation, but rather the

³⁸ Al-Zuhaili (1932-2015) was a Syrian professor and Islamic scholar specializing in Islamic law and legal philosophy. He authored over one hundred and sixty books among which are *Athar al-Harb fi al-Fiqh al-islami: Dirasa Muqarin*, *Al-Fiqh al-islami wa Adilataha*, *Usul al-Fiqh al-islami*, *Al-Fiqh al-Shafi'i al-Muyasir*, *Al-Fiqh al-islami ala Madhhaba al-Maliki*, *Al-Alaqaq al-Dawali fi al-islam*, *Al-Huquq al-insan fi al-Fiqh al-islami bi al-ishtirak ma al-Akhireen*, *Al-islam Din Shura wa Dimuqratiyah* and *Haqq al-Huriyah fi al-Alam*.

³⁹ He authored *Nazariyat al-da wa wa-al-itbath fi al-fiqh al-islami* and *Al-Wilayah al-Khassah: Al-wilayah ala al-nafs wa-al-mal fi al-shariah al-islamiyah*

⁴⁰ *Surat Nisaa*, Chapter 4:118-119

⁴¹ Grand Ayatollah Hussein Fadlallah (16th November 1935- 4th July 2010) was a prominent but controversial Lebanese Shi'ite cleric

discovery of new forms of reproduction within creation.⁴² He then maintain an argument that cloning is not ‘*creation*’ but ‘*manipulation*’ and that there is distinction between the two doings. He further explain that contrary to the thinking of people that scientists and technologists create or invent things, they only or merely discover or develop things from the elements or compounds that are already created by Almighty Allah. Allah originates creation, while scientists discover or explore His creation. Whatever human invents, develops, discovers or creates are already in the knowledge of Almighty Allah. In fact, human gets the knowledge of all things from Allah. He then makes reference to the verses of the Qur’an that says
See thy not how God originates creation, then
Repeats it: Truly that is easy for God.
Say: ‘Travel through the earth and see
how God did originate creation; so will
God produce a later creation: for God has
power over all things.’⁴³

For the jurists that consider cloning as an act of interference in Allah’s will, it is a forbidden act that warrants punishment if done. Others however, consider it only as detestable for being a form of corruption on earth and an evil act.

VII. CLONING WITHIN THE MARRIAGE INSTITUTION

Human cloning may be done within the wedlock particularly where the couple wants to avoid the risk of having children with a genetic diseases such as *Tay-Sachs* disease,⁴⁴ *Spina bifida*⁴⁵ and Down’s syndrome.⁴⁶ Cloning technology may also be resorted to where a wife has fertility problem such as where she is unable to produce effective ovum, or she has no uterus (or the uterus is affected with cancer or any other disease), or she is unwilling to use the uterus for whatever reason. In case of the absence of ovum, she can use the ovum of another woman to fuse it with the DNA of her husband and the resulting embryo can be gestated by the wife. Similarly, the wife can donate only egg which is then enucleated with the DNA of her husband. Then the fertilized egg may be implanted into a surrogate mother who may carry it up to delivery.

Under Islamic law, procreation takes place within the legitimate framework of marriage. In this regards, some jurists that include professor Wahba az-Zuhaili consider cloning as a negation of the context of marriage. In support of this, Sheikh al-Azhar Muhammad Sayyid at-Tantawi⁴⁷ condemned it as being a tool that

seeks to disrupt the institution of marriage and the family unit. He clarified that “All forms by which a human is created from nothing and outside of the context of marriage are forbidden in the Sharia.”

Concerning what the religious scholars called traditional (reproductive) cloning, the overwhelming majority agreed that it is forbidden in Islam. The different stages of a baby born to married couples are detailed in the Qur’an. A Moroccan Islamic scholar, Abu Hassan Ash-Sha’dhili⁴⁸ quoted these verses: “So let man see from what he is created! He is created from a water gushing forth. Proceeding from between the back-bone and the ribs” (86:5–7). He considered this passage to be a clear statement that the human being is composed of both the man’s sperm (back-bone) and the woman’s egg (ribs). Therefore any procedure that may not involve male sperm is forbidden in Islam. In line with this, the jurists further maintained the prohibition of cloning upon the reason that it obscure the *nasab* (paternal lineage) of the cloned person. More often than not, the mixture of the DNA of the donors is shrouded with uncertainty and lack of clarity.

VIII. ESTABLISHMENT OF PATERNITY, MATERNITY AND SIBLING RELATIONSHIP

Cloning is bound to complicate family relationship because it raises questions about paternity, lineage, inheritance, guardianship, fosterage and marriage prohibition. Family Law and Law of Succession are fundamental subjects in Islamic jurisprudence. Also it is on records that the classical jurists had taken family issues seriously to the extent that they hold that anything that causes upheavals to the very formation of family relationship stand as being prohibited.

There is bound to be a dilemma in determining the relationship of a husband that donates his DNA in cloning a child and the cloned child. Is the relationship parental or that of sibling (more of biological twin)?⁴⁹ And if the individual is cloned from his grandparents and not his parents, is the relationship parental or that of sibling? It needs to be understood that in reality a cloned person does not have a father (because it is not from the male sperm) and a mother (because it is not by composition of gamete and it is possibly grown in the uterus which is not of his mother but the surrogate mother) and a sister and a brother and a relative. The novelty of cloning is that it does not need male sperm, it just require cells. So it is possible to find a situation where the donor of the womb, the egg and the DNA is a woman. The clone person in such case may be an absurd personality with no relativity. In such situation, to get a legal aspect into the matter, some jurists

⁴² (Muslim Religious Scholars on Cloning Useful Technology or the Work of the Devil? <https://en.qantara.de/content/muslim-religious-scholars-on-cloning-useful-technology-or-the-work-of-the-devil>)

⁴³ *Surat Ankabut* Chapter 29:19-20.

⁴⁴ Tay-Sachs disease is a rare hereditary disorder that destroys nerve cells in the brain and spinal cord.

⁴⁵ This is a birth defect in which a developing baby’s spinal cord fails to develop properly.

⁴⁶ Down syndrome is genetic chromosome 21 disorder causing developmental and intellectual delays.

⁴⁷ Tantawi (28th October 1928-10th march 2010) was an influential Islamic scholar in Egypt and had served as the Grand Mufti in 1996.

⁴⁸ He is of Maliki School of jurisprudence.

⁴⁹ Moeinifar M. and Ardebeli F. A., Lineage and the Rights of Cloned Child in the Islamic Jurisprudence, journal of Reproduction and Fertility, Vol. 13 (4) Oct-Dec. 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3719344/>,

maintained that if the cloning procedure was made with the consent of the husband, then the principle of *walad lil firash* ('the son belongs to the bridal bed) will apply on the basis of *Maslaha* in order to legitimize the cloned personality. Shi'ite scholars that include Ayatollah Makarem Shirazi⁵⁰ and Abolghasem Georgia ascribed to this view.⁵¹ This view did not hold for majority of the sunning jurists.

Loss of kinship and lineage is therefore highly probable for cloned personalities. But then in Islamic law, lineage is one of the most basic human rights that entitled an individual to inherit (from his family and also be inherited). Understandably any biomedical science or technology that seek to annihilate this God's given right is deemed to be illegal and hence, prohibited. Again, in the area of *qasas* (a Doctrine of Equal Retaliation in Islamic criminal law that provides for a punishment analogous to the crime), a cloned individual may not have relations to contribute towards payment of *diyyah* (financial compensation paid to the heirs of a victim in the case of murder) enforced to him.

IX. CLONING AS DEHUMANIZATION ACT

Cloning technology creates a new form of humans with no speck of uniqueness and individuality because the cloned personalities are merely being manufactured and hand-made not born naturally. It follows therefore that the worthiness and honour of human identity is not with a cloned person. This, in itself bears a strong psychological problem in him and placed him in inferior position with the rest of humanity. Such personality defy definition and position in the society. On the basis of this, some jurists prohibited it, citing the verse of the Qur'an where Allah had said that He dignified human race. Says He, "We have honoured the sons of Adam...and conferred on them special favours, above a great part of Our creation."⁵²

Though the concept of human dignity and human right don't play much of a role in the discussion of cloning, the former Mufti of Tunisia, Muhammad Mukhtar as-Salami, had place emphasis on them while reviewing the procedure. His argument that the technology represent an encroachment on basic human dignity had found the acceptance of the Abd al-Muhsin al-Turki, the Secretary-General of the Muslim World League, Professor Ali Khalifa (of Ain Shams University). Khalifa emphasized that it is a threat to one's human personality, human dignity and honour, while al-Turkey even call the technology heretical.

Some jurists work upon the speculation that cloned humans are likely to be created for the sole purpose of providing organ donations to naturally born humans, despite the fact that they are

fully sentient and self-aware. In such situation, humans would be created for their commodity and utility value. They even be 'manufactured' for erotic purpose or for military drive. All these and similar purposes defeated the purpose of human creation, and as such, the jurists maintained the stand of prohibition.

X. CONCLUSION

Discussions on cloning are complex and controversial even in the conventional English legal systems. The Islamic jurisprudence is likewise not straight-forward on the issue, perhaps because it is a recent development relatively unknown in the early period of Islam. Islamic law, however, (in addition to the Qur'an and Sunnah) is (further) equipped with legal elements of *ijma*, *ijtihad*, *qiyas*, *ih-tisn* and *maslaha* that always propel the law to move with human progressions and developments. Islamic law is therefore bound to move in tandem with scientific feat in this area of genetic engineering and cloning. To arrive at a better Islamic perspective on the issue, the concepts of *ijtihad* and *maslaha* should particularly be exploited wholesomely by, not only religious theologians, but also Muslim experts in the areas of law, genetics, embryology and medicines.

The efforts of some Islamic/scientific institutions that include Organisation of Islamic Conference (OIC), Islamic Educational, Scientific and Cultural Organisation (ISESCO), Islamic Organisation of Medical Sciences (IOMS), Islamic Fiqh Academy (IFA), International Islamic Fiqh Academy and Al-Hiyan Institute for the Scientific and Medical Researches is commendable, especially in seeing to the successes of the Casablanca and Jeddah Conferences sometimes in 1997 over the issue. Equally creditable is the scholarly efforts of the likes of Sa'id bn Mansur of the Faculty of Shari'a and Law of the University of Sanaa, Yemen. University in reviewing the opinions of Muslim scholars on the topic in his two-volume work titled *Al-Mawsu'a al-fiqhiyya li al-ajinna wa al-istinsa kh al-bashari* (Juristic Encyclopedia on Embryos and Human Cloning). These experts must delve into discussion of this area of knowledge with passion, interest and enthusiasm.

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⁵⁰ Shirazi (born 25th 1927) is an Iranian scholar a billionaire mullah.

⁵¹ *ibid*

⁵² Surat Banu Isra'il, Chapter 17: 70.