

Intellectual Property Rights: Cloning; The Pros And Cons

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Introduction:

The intellectual property in India is important at all levels of statutory, administrative and judiciary. India ratified the agreement establishing the world trade organization. This agreement inter alia contains an agreement on trade related aspects of the intellectual property rights, which came into force on the 1st January 1995. It lays down the minimum standards of protection and the enforcement of the intellectual property rights in the member countries with a view to reduce the distortions and impediments in the international trade. Trips provided for the norms and the regulation in respect following areas of the intellectual property copyrights and the related rights, trademarks, geographical indications, industrial designs, layout designs of the integrated circuits, protection of the undisclosed information (trade secrets), patents and plant varieties¹.

The TRIPS Agreement required Member countries to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal tests of novelty, inventiveness and industrial applicability.

Hypothesis:

Cloning is violative of human ethics. Indian Patent Act and TRIPS agreement clearly lays down that any Invention which is against human ethics cannot be given patent protection even if it has novelty, inventive step and capable of industrial application.

CHAPTER 1: The Science Of Human Cloning

While the ethics and legality of human cloning are blurry, the science behind the idea is quite clear, with all research suggesting the practice is possible. Scientists have already cloned human embryos and many believe creating fully developed humans is the next step. But while novels such as Cloning describes a number of processes used to create genetically identical copies of a biological entity. Although these processes can occur naturally, such as in some plants and bacteria, the cloning that most likely comes to mind when you hear the word is artificially copying a whole animal. According to the National Institutes of Health, for this type of cloning, also known as reproductive cloning, scientists remove a mature somatic cell (any type of cell, except a sperm or egg cell) from the animal the scientists wish to copy². The desired DNA is

then transferred into an egg of the same species that has had its own DNA removed. Cloning takes the randomness out of sexual reproduction. Most living things on Earth get half of their DNA from their mother and half from their father, giving them an endless number of genetic probabilities to create their own unique DNA. In cloning, DNA only comes from one organism, which takes the game of chance out of the reproduction and gives offspring an exact copy of the original DNA. The cloned egg is then allowed to mature into an early embryonic stage before it is injected back into the womb of an adult female animal for gestation. Upon birth, the newborn animal is officially known as a clone. Cloning animals is not new science, with the first animal, a tadpole, being cloned in 1952. In 1996, Dolly the sheep became the first mammal to have been successfully cloned born. According to the University of Utah, to date scientists have cloned even more animals, including mice, cows, and goats. Cloning is also an important practice in other facets of science, although not to the same degree as reproductive cloning. For example, therapeutic cloning, that is cloning embryonic stem cells for testing is a regular practice with the goal of creating not a whole being but rather replacing damaged tissue. In a 2014 study, scientists were able to clone adult stem cells, a huge breakthrough for therapeutic cloning research.

It would be theoretically possible to clone humans, but, to date, there are no records of an actual fully developed human ever being cloned, Live Science reported. The closest we have come to this is the 1997 cloning of our closet relative: the monkey³. Scientists have also succeeded in creating human clone embryos from the skin cells of both infants and full grown adults. However, none of these embryos were ever allowed to mature fully.

Despite scientists being capable of cloning humans, it is still highly unlikely that procedure will even come to be due to ethical reasons. For example, cloning has an extremely high failure rate, with only about one out of 100 cloning attempts ending in a viable animal. Also, reported by Live Science, currently cloned animals also experience poor health. Many are born with abnormally large organs and as a result they often die early or need to be euthanized. For these reasons, many scientists are opposed to even conducting research into the highly controversial subject.

CHAPTER 2: Is There a Moral Right to Use Human Cloning?

Human cloning is a means of reproduction (in the most literal sense), and so the most

plausible moral right at stake in its use is a right to reproductive freedom or procreative liberty (Robertson 1994a; Brock 1994). Reproductive freedom includes not only the familiar right to choose not to reproduce, for example by means of contraception or abortion, but also the right to reproduce. The right to reproductive freedom is properly understood to include as well the use of various artificial reproductive technologies, such as in vitro fertilization (IVF), oocyte donation, and so forth. The reproductive right relevant to human cloning is a negative right, that is, a right to use assisted reproductive technologies without interference by the government or others when made available by a willing provider. The choice of an assisted means of reproduction, such as surrogacy, can be defended as included within reproductive freedom, even when it is not the only means for individuals to reproduce, just as the choice among different means of preventing conception is protected by reproductive freedom. could be argued that human cloning is not covered by the right to reproductive freedom, because whereas current assisted reproductive technologies and practices covered by that right are remedies for inability to reproduce sexually, human cloning is an entirely new means of reproduction; indeed, its critics see it as more a means of manufacturing humans than of reproduction⁴. Human cloning is a different means of reproduction than sexual reproduction, but it is a means that can serve individuals' interest in reproducing. If it is not covered by the moral right to reproductive freedom, I believe that must be not because it is a new means of reproducing, but instead because it has other objectionable moral features, such as eroding human dignity or uniqueness. The right to reproductive freedom is usually understood to cover at least some choice about the kind of children one will have; for example, genetic testing of an embryo or fetus for genetic disease or abnormality, together with abortion of an affected embryo or fetus, are now used to avoid having a child with that disease or abnormality⁵. Genetic testing of prospective parents before conception to determine the risk of transmitting a genetic disease is also intended to avoid having children with particular diseases.

But even for opponents of human cloning, the fundamental moral issue is not acquiring the knowledge that would make it possible, but using that knowledge to do human cloning. Since it is possible to prohibit human cloning itself, without prohibiting all research on it, it is not necessary to limit the freedom of scientific inquiry in order to prevent human cloning from taking place. But this means as well that a right to freedom of scientific inquiry could only protect research on human cloning, not its use. For this reason, I believe the fundamental moral

right which provides presumptive moral support for permitting the use of human cloning is the right to reproductive freedom, not the right to freedom of scientific inquiry. My discussion in what follows will principally concern the moral issues in the use of human cloning, not those restricted to research on it. The following are the individual and social benefits of cloning.

1. Human cloning would be a new means to relieve the infertility some persons now experience. Human cloning would allow women who have no ova or men who have no sperm to produce an offspring that is biologically related to them. Embryos might also be cloned, either by nuclear transfer or embryo splitting, in order to increase the number of embryos for implantation and improve the chances of successful conception (NABER 1994). While the moral right to reproductive freedom creates a presumption that individuals should be free to choose the means of reproduction that best serves their interests and desires, the benefits from human cloning to relieve infertility are greater the more persons there are who cannot overcome their infertility by any other means acceptable to them. I do not know of data on this point, but they should be possible to obtain or gather from national associations concerned with infertility. In such a case human cloning would be the best or only means of overcoming an individual's infertility⁶.

2. Human cloning would enable individuals to clone someone who had special meaning to them, such as a child who had died. There is no denying that if human cloning were available, some individuals would want to use it in order to clone someone who had special meaning to them, such as a child who had died, but that desire usually would be based on a deep confusion. Cloning such a child would not replace the child the parents had loved and lost, but rather would create a new and different child with the same genes. The child they loved and lost was a unique individual who had been shaped by his or her environment and choices, not just his or her genes, and more important, who had experienced a particular relationship with them. Even if the later cloned child could have not only the same genes but also be subjected to the same environment, which of course is in fact impossible, it would remain a different child than the one they had loved and lost, because it would share a different history with them. Nevertheless, if human cloning enabled some individuals to clone a person who had special meaning to them and doing

so gave them deep satisfaction, that would be a benefit to them even if their reasons for wanting to do so, and the satisfaction they in turn received, were based on confusion⁷.

3. Human cloning and research on human cloning might make possible important advances in scientific knowledge, for example about human development . While important potential advances in scientific or medical knowledge from human cloning or human cloning research have frequently been cited in some media responses to Dolly's cloning, there are at least three reasons why these possible benefits are highly uncertain⁸. First, there is always considerable uncertainty about the nature and importance of the new scientific or medical knowledge to which a dramatic new technology like human cloning will lead; the road to that new knowledge is never mapped in advance and takes many unexpected turns. Second, we also do not know what new knowledge from human cloning or human cloning research could also be gained by other methods and research that do not have the problematic moral features of human cloning to which its opponents object. Third, what human cloning research would be compatible with ethical and legal requirements for the use of human subjects in research is complex, controversial, and largely unexplored. Although there is considerable uncertainty concerning most of the possible individual and social benefits of human cloning that I have discussed above, and although no doubt it may have other benefits or uses that we cannot yet envisage, I believe it is reasonable to conclude that human cloning at this time does not seem to promise great benefits or uniquely to meet great human needs. Nevertheless, a case can be made that scientific freedom supports permitting research on human cloning to go forward and that freedom to use human cloning is protected by the important moral right to reproductive freedom. We must therefore assess what moral rights might be violated, or harms produced, by research on or use of human cloning⁹.

CHAPTER 3: Moral Arguments Against Human Cloning

Many of the immediate condemnations of any possible human cloning following Wilmut's cloning of an adult sheep claimed that it would violate moral or human rights, but it was usually not specified precisely, or often even at all, what the rights were that would be violated. According to the argument of various scholars and also even me is unsuccessful that human cloning would violate an important moral or human right¹⁰. We need not pursue what the basis or

argument in support of a moral or human right to a unique identity might be such a right is not found among typical accounts and enumerations of moral or human rights because even if we grant that there is such a right, sharing a genome with another individual as a result of human cloning would not violate it. The idea of the uniqueness, or unique identity, of each person historically predates the development of modern genetics and the knowledge that except in the case of homozygous twins, each individual has a unique genome. A unique genome thus could not be the grounds of this long-standing belief in the unique human identity of each person. In a different context, and without applying it to human cloning, Joel Feinberg has argued for a child's right to an open future. This requires that others raising a child not close off future possibilities that the child would otherwise have, thereby eliminating a reasonable range of opportunities from which the child may choose autonomously to construct his or her own life. One way this right to an open future would be violated is to deny even a basic education to a child. Another way might be to create him as a later twin, so that he will believe his future has already been set for him by the choices made and the life lived by his earlier twin. The upshot of our consideration of a moral or human right either to a unique identity or to ignorance and an open future is that neither would be violated by human cloning. Perhaps there are other possible rights that would make good the charge that human cloning is a violation of moral or human rights, but I am unsure what they might be. I turn now to consideration of the harms that human cloning might produce. There are many possible individual or social harms

1. Human cloning procedures would carry unacceptable risks to the clone:

One version of this objection to human cloning concerns the research necessary to perfect the procedure. The other version concerns the later risks from its use. Wilmut's group had 276 failures before their success with Dolly, indicating that the procedure is far from perfected, even with sheep. Further research on the procedure with animals is clearly necessary before it would be ethical to use the procedure on humans. But even assuming that cloning's safety and effectiveness is established with animals, research would need to be done to establish its safety and effectiveness for humans¹¹. Could this research be ethically done (Pollack 1993)? There would be little or no risk to the donor of the cell nucleus to be transferred, and his or her informed consent could and must always be obtained. There might be greater risks for the woman to whom a cloned embryo is transferred, but these should be comparable to those associated with IVF procedures. The woman's informed consent, too, could and must be obtained. Comparable risks to cloned human embryos would apparently be their death or destruction long before most people or the law consider them to be persons with moral or legal protections of life. Moreover, artificial reproductive technologies now in use, such as IVF, have a known risk that some embryos will be destroyed or will not successfully implant and will die. It is premature to make a confident assessment of what the risks to human subjects would be of establishing the safety and effectiveness of human cloning procedures, but there are no unavoidable risks apparent at this time that would make the necessary research clearly ethically impermissible.¹²

2. Human cloning would divert resources from other more important social and medical needs:

As we saw in considering the reasons for, and potential benefits from, human cloning, in only a limited number of uses would it uniquely meet important human needs. There is little doubt that in the United States, and certainly elsewhere, there are more pressing unmet human needs, both medical or health needs and other social or individual needs. This is a reason for not using public funds to support human cloning, at least if the funds actually are redirected to more important ends and needs. It is not a reason, however, either to prohibit other private individuals or institutions from using their own resources for research on human cloning or for human cloning itself, or to prohibit human cloning or research on human cloning. The other important point about resource use is that it is not now clear how expensive human cloning would ultimately be, for example, in comparison with other means

of relieving infertility. The procedure itself is not scientifically or technologically extremely complex and might prove not to require a significant commitment of resources.

3. Human cloning might be used by governments or other groups for immoral and exploitative purposes:

In *Brave New World*, Aldous Huxley imagined cloning individuals who have been engineered with limited abilities and conditioned to do, and to be happy doing, the menial work that society needed done (Huxley 1932). Selection and control in the creation of people was exercised not in the interests of the persons created, but in the interests of the society and at the expense of the persons created. Any use of human cloning for such purposes would exploit the clones solely as means for the benefit of others, and would violate the equal moral respect and dignity they are owed as full moral persons. If human cloning is permitted to go forward, it should be with regulations that would clearly prohibit such immoral exploitation.

4. Human cloning might be used by commercial interests for financial gain:

Both opponents and proponents of human cloning agree that cloned embryos should not be able to be bought and sold. In a science fiction frame of mind, one can imagine commercial interests offering genetically certified and guaranteed embryos for sale, perhaps offering a catalogue of different embryos cloned from individuals with a variety of talents, capacities, and other desirable properties. This would be a fundamental violation of the equal moral respect and dignity owed to all persons, treating them instead as objects to be differentially valued, bought, and sold in the marketplace. Even if embryos are not yet persons at the time they would be purchased or sold, they would be valued, bought, and sold for the persons they will become. The moral consensus against any commercial market in embryos, cloned or otherwise, should be enforced by law, whatever public policy ultimately is created to address human cloning. It has been argued that the law may already forbid markets in embryos on grounds that they would violate the thirteenth amendment prohibiting slavery and involuntary servitude¹³.

Conclusion :

However there are both pros and cons the cons are soo serious .Human cloning has until

now received little serious and careful ethical attention, because it was typically dismissed as science fiction, and it stirs deep, but difficult to articulate, uneasiness and even revulsion in many people. Any ethical assessment of human cloning at this point must be tentative and provisional. Fortunately, the science and technology of human cloning are not yet in hand, and so a public and professional debate is possible without the need for a hasty, precipitate policy response. The ethical pros and cons of human cloning, as I see them at this time, are sufficiently balanced and uncertain that there is not an ethically decisive case either for or against permitting it or doing it¹⁴. Access to human cloning can plausibly be brought within a moral right to reproductive freedom, but the circumstances in which its use would have significant benefits appear at this time to be few and infrequent. It is not a central component of a moral right to reproductive freedom, and it serves no major or pressing individual or social needs. On the other hand, contrary to the pronouncements of many of its opponents, human cloning seems not to be a violation of moral or human rights. But it does risk some significant individual or social harms, although most are based on common public confusions about genetic determinism, human identity, and the effects of human cloning. Because most moral reasons against doing human cloning remain speculative, they seem insufficient to warrant at this time a complete legal prohibition of either research on or later use of human cloning. Legitimate moral concerns about the use and effects of human cloning however, underline the need for careful public oversight of research on its development, together with a wider public debate and review before cloning is used on human beings.

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