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THE ETHICS OF HUMAN EMBRYONIC STEM CELL RESEARCH: PROPOSALS FOR A LEGAL FRAMEWORK FOR INDIA

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India permits and promotes human embryonic stem cell research. India is also an embryo-surplus nation due to the widespread application of in-vitro-fertilization technology. Because of the high social value placed on progeny in India, many infertile couples avail this technology to get a child and thus escape from social ostracism. In the process, surplus embryos are produced. In the natural course, the surplus embryos would die and be discarded after a certain period of time when they have no chance to be implanted into the womb of a woman. Scientists want to use these surplus embryos for

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research and this demand is getting momentum all over the world. India permits human embryonic stem cell (hESC) research with surplus embryos up to 14 days old. The Guidelines on Stem Cell Research and Therapy by the Department of Biotechnology and Indian Council of Medical Research (DBT-ICMR Guidelines) regulate the whole field of stem cell research in India in the absence of a binding legislation. Governmental and private stem cell centres are to be approved by the Institutional Committees for Stem Cell Research and Therapy (IC-SCRT) and the Drug Control General of India (DCGI) and are to be registered under the National Committee for Stem Cell Research and Therapy (NAC-SCRT).

The DBT-ICMR Guidelines are only regulatory statements. Neither are these guidelines legally binding nor do they discuss the morality of using embryos for research. There is no law, such as the Embryo Protection Law of Germany to assure protection for the embryo. Further, there is lack of public awareness about the research and hence a notable absence of public debate on it. Added to that, the entire research is led by private companies with an eye on its economic potential and considered as a matter for medical or health fields. Science and technology are treated as mere instruments for economic development. In this way India presents itself as a favourable environment for this research. But this liberal attitude towards scientific research including hESC research seems to keep ethics out of its purview, which is a matter of great concern. Unfortunately, there is hardly any opposition from any quarter including religious agencies to the derivation and use of embryonic stem cells for research. Therefore, India is internationally seen as the potential headquarters of stem cell research and multinational companies are investing huge amounts of money in stem cell centres in India. Overly populated and largely illiterate India stands as a potential victim of exploitation in the stem cell sector. The government plays a proactive role in promoting the research in order to boost its economy. Thus, India seems to have a great stake in this research exploiting its largely available source of IVF surplus embryos.

The derivation of human embryonic stem cells took place for the first time in 1998. Since then, scientists all over the world postulated that this research would bring about significant advancement in the study of the cell biology which in turn would lead to significant

breakthroughs in drug testing and cures for treatment of presently incurable illnesses, such as, Alzheimer´s and Parkinson´s. However, as of now, this research is not possible without destroying human embryos from which the embryonic stem cells are obtained. The destruction of the embryo is the key ethical problem in this research, while the inner mass cells are removed from the embryo at the blastocyst stage. It attracts condemnation from different quarters, especially, from ethicists and theologians, as they consider the embryo to be a human being inherent with moral standing and human dignity.

The goals of hESC research are noble in the context of basic as well as clinical research, but in the process the very science of it destroys human life. The application of embryonic stem cells has also resulted in distressing deaths of some patients who underwent treatment with it. The media have often reported breakthroughs using stem cells without making a distinction between hESC research and other forms of stem cell research. The hESC research raises the fundamental question about the moral status of the embryo. The normative status of moral standing is attributed to all human beings based on their biological, ontological, and constitutional status. It is not external, but inherent! No one can give it or take it away. It is simply there in every human being by virtue of his or her being human. This moral status gives humans a dignity — a value that is above all values. Thus, they have an inviolable right to life from the moment of conception to natural death.

There are mainly two views regarding the moral status of the embryo: i) absolute view and ii) gradualist view. The absolute view recognizes human dignity, namely, the moral status, in every human being from the moment of conception to natural death. The SCIP (Species, Continuity, Identity andPotentiality) arguments substantiate the claim that the embryo grows as human from the beginning and not unto human. It is a sufficient condition to accord moral respect to the embryo. No living being becomes anything other than what it essentially is. The human embryo continues to be the same human living organism in all its stages, and there is no discontinuity to suggest a difference in the moral weight. The embryo-human has an inherent, real, active potency to become an adult-human. The unborn human embryo is always human from conception, and therefore, has

an inviolable right to life and protection that an adult human deserves.

The gradualist positions on the moral status of the embryo are based on certain criteria, namely, implantation, biological viability, personhood, nervous system and identical twinning. Each of these criteria is used arbitrarily to accord a graded moral status to the embryo at different stages of development during pregnancy until birth or even after birth. The criterion of biological viability says that the unborn embryo should be given a moral worth and protection only when the embryo can survive independent of the mother. However, the factors of location and dependency do not make any essential change in the moral status of the embryo, and thus, the embryo is fully human and a living organism from conception. There is no decisive moment to begin to call a human "human" than the moment of fertilization itself, when the 23 chromosomes of each parent are present in the new being.

Gradualist positions based on individuality and identical twinning are not convincing either, for they cannot deny the ontological existence of an organism with its unique individuality and identity prior to implantation. There is an organism of a human individual, before two (or more) new organisms may come to exist at the stage of primitive streak. Exercising the capacities of consciousness and reason alone cannot be taken to weigh moral status, for these capacities are potentially present in the embryo. The nervous system grows gradually from the moment of conception. At the early stage, the capacities of a brain are latent and the embryo requires only a physical growth. Gradualist arguments based on rational capacities would exclude patients in coma from the community of human persons. The concept of person and the criterion of personhood are misleading in bioethical discussions. The terms "human" and "person" are closely intertwined. Both these concepts are identical and have the same extensional meaning. Further, there is an urgent need to recognize human bodiliness without which our very talk about human personhood becomes impossible and baseless. Human bodiliness is foundational here. Kantian ethics has given the insight that the human himself is an end-in-himself, and not only, when the human is said to be an active person. Thus, the embryo is a human at first, even before we describe it as an active person, who already as a human should never be used merely as a means.

The arguments of natural law, human fulfilment, human rights and communitarianism should stand against hESC research, for embryos have the same human rights as any other human being, and thus, they must be protected. Embryos are not some anti-social elements threatening the community. They are innocent and vulnerable. Their lives should not be sacrificed for the sake of the community. Moreover, the superiority of embryonic stem cells over adult stem cells has been a theoretical claim. While embryonic stem cells have not produced any successful result, adult stem cells are safer and have produced successful results.

Various countries have taken different positions regarding hESC research. They can be categorized into four positions: restrictive, permissive, moderate and compromise. Austria, Ireland, Cyprus, Costa Rica and Italy prohibit hESC research by law. It is a restrictive position. The countries of regions of the Middle East, the Persian Gulf and Africa seem to have either the permissive or the flexible option regarding hESC research. Iran seems to be a leading country in this research and Saudi Arabia considers biotechnology including hESC research as the new oil of Saudi Arabia. Australia and New Zealand have the permissive option. A similar position exists in the Asian countries, especially, China, India, Japan, Singapore and South Korea, where hESC research is possible with surplus embryos as well as therapeutic clones. Brazil, Canada, France, Iran, South Africa, Spain, Taiwan, and certain other countries have a moderate position allowing hESC research only with the surplus embryos. Germany has adopted the compromise position. It gives an absolute protection to embryos by law, but permits hESC research on imported stem cell lines.

Religions have adopted various positions on hESC. The Roman Catholic Church expresses its strict opposition to hESC research which is, according to the Catholic Church, unethical per se, because it destroys a human life with inherent dignity. It states unequivocally that a new human organism comes into existence at fertilization. Each fertilized egg is a unique human individual with inherent moral status. This inherent dignity has a theological foundation, as human beings are created in the image and likeness of God himself. Thus, human beings are sacred. It is therefore morally wrong to destroy embryos and, hence the direct killing of an embryo can never be justified even on the noble ground of saving lives. The Catholic

Church opposes similarly the use of stem cells, which have been obtained from embryos by a third party. It would amount to complicity in an evil act that has already taken place. Some ethical committees make distinction between the evil act of obtaining stem cells from embryos and the use of those stem cells. This distinction, however, cannot stand ethical scrutiny. There still exists a tacit acceptance of actions, which are gravely unjust and illicit.

Among the Protestants, there are two different views. The supporters of hESC research make a value assessment on the moral worth of embryos and justify the research on grounds of therapeutic purposes. However, some Protestants oppose the research based on arguments similar to Catholics. They, too, like Catholics and the Eastern Orthodox tradition, encourage research on alternative sources of stem cells. Conservative and Orthodox Jewish streams support hESC research. They consider it to be a sacred duty to heal and save human life, and thus support hESC research using embryos up to the 40th day. The Islamic legal system accords moral status to the embryo from the 120th day. Though some Islamic physicians believe that human life begins at conception and is sacred, they too support hESC research on the ground that healing is a sacred duty.

The Hindu scriptural view of anthropology explains that the human being (ātman) is indeed an extension of God (Brahman) Himself who created the whole cosmos. The Brahman is present in His creation. Thus, the human being is sacred and cosmic. The laws of karma and dharma are intertwined with the earthly human life. They motivate one to strive for one´s own salvation as well as to conduct oneself morally while establishing a dharmic society. The cardinal virtue of ahimsa demands one not to injure any life, especially, an innocent human life. Progeny is considered very important for social and religious reasons; and pregnant women and children are given utmost protection according them moral significance, too. Preserving of life is given precedence over the common good. The embryo and in fact, the act of conception itself, are considered sacred, and therefore, a supreme protection is to be given to the unborn as well as to the pregnant woman. Abortion is severely condemned. It is a social as well as a moral evil. It disrupts the social dharma and deprives the salvation of the embryo. Only when the life of the mother is in danger, an induced abortion or removal of the embryo is permitted. Embryo is a human person from the moment of conception because

of the presence of ātman (self) from that very moment. Thus going by the scriptural teachings of Hinduism, hESC research can never be permissible because it would kill the human embryo which has a moral status and whose life is sacred, and deprives it of the possibility of salvation.

The empirical study on public opinion on hESC research has revealed the diversity of views present in India regarding this research. Most of the interviewees consider that hESC research can be permissible in order to find new medicines to cure incurable illnesses. However, one of the interviewees said that hESC research per se is unethical, because the embryonic stage is the beginning of a human life. If it is permitted to happen to the embryo, it would gradually be applied to any human life. But the aspect of sacrifice is quite strong in Indian mind even if it costs a life for life. There is the absence of legislation, lack of awareness and minimal debate. The whole question of the morality of using embryos for research does not surface into the open. This has led to minimal cultural and religious opposition and a liberal attitude of policy makers permitting scientists to do research with surplus embryos.

Many of the interviewees and survey respondents feel that ethics is a secondary issue in India. Infertility, poverty and illiteracy are also contributing causes in creating surplus embryos and in getting [un]informed consent for research with the remaining embryos. The quantitative survey also has reflected varied views. The knowledge about hESC research seems to be minimal among the respondents. However, one-third of the respondents opposed hESC research saying that it is unethical and conflicts with their religious beliefs. More than half of them expressed the view that human life begins at conception and hESC research is morally wrong. Another statistics reports that 80% of Hindu women oppose abortion and 56% find it to be a grave crime. Yet the support for the research is relatively high on the ground of sacrifice, though a significant number of them opposed the use of public money for hESC research. Overpopulation, illiteracy, infertility, and legalized abortion seem to contribute to the lax attitude towards hESC research.

Ethical proposals for a legal framework are based on scientific, philosophical, and theological arguments that establish that the embryo is a human being from the instant of conception and has an inherent, absolute moral status. The thesis thus concludes that there

can be only one all-embracing criterion of bioethics to deal with humans without discrimination: that is, all human beings have a moral status and a fundamental right to live by virtue of their affiliation to the human species. Human embryos belong to the human species by their mere affiliation and have a right to life, which must be guaranteed without any invasion and a moral status, which must be protected against any violation. The human embryonic stem cell research destroys a viable human embryo and its moral status and its sanctity. Therefore, it must be stopped. Scientists should concentrate on finding alternative medicines and research with non-embryonic stem cells. Government must invest public money responsibly in projects, which do not violate fundamental human rights. The fundamental right to life is enshrined in the constitutional law of the country. This fundamental right to life can be a common ground to protect every human life including that of embryos without any discrimination. It needs human conscience to accept the democratically defined declarations, which state that human life has an inviolable dignity. Declarations do not promote an unequal handling of dignity with gender, class, age, or race, but instead they express that dignity is common to all humans. Religions have a greater role to evaluate biomedical issues rightly and guide the people with right information for right decision-making.