



## Legitimacy of Child in Pakistan with Special Reference to Islamic Law and Medical Sciences: An Appraisal

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**Abstract:** *Legitimacy of a child is the most sensitive issue to be discussed although there are many issues in relation to the presumption of legitimacy of a child, they remained the same for a long period of time mainly because of the excuse of religion. This research is related to the Legitimacy of a Child in Pakistan reference to Islamic Laws and Medical Science. In Pakistan, the legitimacy of a child is dealt with according to Article 128 of the Qanoon-e-Shahadat Order, 1984 and Muslim Personal Laws. In this, I discussed the inconsistency of some laws with medical science. I have also proposed some more ways to determine the legitimacy of a child rather than using laws available in Pakistan as a sole entity. It is important to determine the paternity of a child as it leads to succession, maintenance, guardianship, inheritance and much more. This research also highlights the importance of re-formulation of present laws related to the legitimacy of a Child in Pakistan.*

**Key Words:** Legitimacy, Child, Islamic Law, Medical Science, DNA

### Introduction

Legitimacy of a child is a very sensitive issue to discuss. Before discussing the topic in detail it is necessary to understand who are considered legitimate children in Pakistan. A legitimate child is one who's born during the continuous of a lawful wedding. Under Pakistan's regulation a legitimate baby is one who's born after the expiration of six lunar months of marriage and earlier than the expiration of two lunar years of dissolution of marriage. Birth throughout marriage is a conclusive evidence of legitimacy unless contrary appears.

In Muslim law parentage is based on lawful marriage. Parentage is a legal bond between the children and parents. It carries enormous importance in respect of determining rights and obligations of parents and children towards each other such as inheritance, guardianship, maintenance, succession etc. Determination of paternity is the main question concerned in legitimacy of a child. Paternity refers to father while maternity refers to mother, as the mother carries the child so there is no doubt left in determining maternity but sometimes the questions arise in relation

to paternity. Here an interesting question raises that whether Islam allows husband to deny paternity? We will discuss this hereafter. But Pakistan's law says that father can refuse the paternity but at the same time it imposes some limitations to do so. According to Qanoon-e-Shahadat Order a father may deny the paternity while at the same time Muslim Personal Law specifies some conditions under which paternity can be denied to narrow its scope. According to Muslim Personal Law there are two main conditions which need to be fulfilled to deny paternity firstly a father can deny paternity within 40 days when child was born and if there is case of Zina or adultery then before consummation with his wife (Disemadi, H. S., 2019).

In a country like Pakistan people feel very uncomfortable and hesitate while discussing or addressing the issues related to legitimacy but when the doubt arises in this regard it becomes indispensable to inquire the matter and this can be done by the one who is well aware of all the related laws in Pakistan, interpretations by Islamic School of Thoughts and Medico-legal factors related to presumption of

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legitimacy of a child. In Pakistan Article 128 of Qanoon-e-Shahadat Order, 1984 and Muslim Personal Laws directly deals with legitimacy of child but they are not enough to determine the legitimacy and need more interpretation. Article 128 of Qanoon-e-Shahadat Order should also be self-explanatory so that no stone remain unturned in the way of justice to be done.

Pakistan being an Islamic country has laws which are in conformity with the injunctions of Islam. Primary sources of laws are Quran and Sunnah after these Islamic Schools of Thoughts still if there any ambiguity left Islam has given us the concept of Ijtihad. When we observe Islamic Schools of Thoughts on matters related to presumptions of legitimacy we find that all school of thoughts give the shortest period of a legitimate child to be born after marriage is six lunar months but contradiction appears in length of maximum period of a child to be born after dissolution of marriage either by divorce or by death of husband.

Role of medical sciences need to be clearer in determining legitimacy of a child. Legal system of Pakistan does not give appropriate weightage to medical factors while determining the legitimacy of a child. Medical science has been very advanced now and evolving day by day. It gives us better ways for determination of legitimacy with minimum chances of mistake. But the judicial mind set of our courts still prefer traditional methods and does not encourage using advanced medical techniques like DNA evidence to determine paternity. For the determination of legitimacy all the facts should be observed keenly and all necessary measures should be taken for ensuring proper justice.

Unfortunately legal system in Pakistan provided for dealing with issues related to legitimacy has many dents in it and is not very well equipped. It needs to be revised and structured again with some necessary amendments so that no ambiguities can be left. Cases related to legitimacy of children are increasing day by day in Pakistan and any child who is stigmatized as illegitimate without legal proof or merely because of inadequate legislation or defective system would be the worst degree of injustice to him as well as to humanity.

### **Critical Analysis of the Legitimacy of child under Pakistan's Law**

Suits involving questions related to legitimacy of a child or challenging the paternity of a child is a difficult situation for Courts. As questions regarding legitimacy of a baby come with a lot of emotional stress as well, as it's miles a count involving many lives and future of many human beings including an harmless toddler his

life depends upon the selection of the court. So the most efforts of the courts is to set up paternity in cases in which a toddler is born in the course of legitimate marriage as in Muslim regulation and in all civilized systems of law the kid follows the bed (Firash). In order to set up legitimacy of a child in Courts beginning for the duration of marriage is a conclusive proof, by using establishing paternity or acknowledgement via the daddy, or by using the usage of proof.

In Muslim regulation legitimacy of a child is without delay related to marriage. A individual born in the course of the lawful marriage is considered legitimate. In Pakistan Article 128 of Qanoon-e-Shahadat Order, 1984 immediately deals with instances associated with legitimacy of baby and Muslim Personal Law publications extra about it and problems which can be without delay or indirectly related to legitimacy of a infant. So for better understanding of presumptions related to legitimacy of a child in Pakistan it is necessary to study in detail the concept of legitimacy under Qanoon-e-Shahadat Order and Muslim Personal Law.

### **Who are legitimate children according to QSO?**

By now it is crystal clear that a child born during a lawful wedlock is considered as legitimate there is no chance that a child born out of a lawful wedlock will be considered as legitimate by any chance. By interpreting Article 128 in detail we see some essentials which need to be fulfilled in order to prove legitimacy of a child these are mentioned below:

- Any person born during marriage
- Valid Marriage
- Child born not earlier than six lunar months of marriage
- In case of dissolution of marriage child born not after two years of dissolution
- Mother remained unmarried after dissolution
- Husband has not refuse to own the child

Article 128 of Qanoon-e-Shahadat Order does not apply to non-Muslims. Cases related to legitimacy of child when brought by non-Muslims they will be dealt according to rules provided by their religion in this regard.

### **Birth during continuous valid marriage**

It states that any person born during the continuance of a valid marriage is legitimate. In this point there are two main words that draw attention towards them which are "continuous" and "valid" marriage. According to Qanoon-e-Shahadat naturally any

person who is born during continuous of a valid marriage is legitimate unless contrary appears like if father denies paternity. The term continuous marriage is quite easy to understand here it means that a couple legally having status of husband and wife conceive the child during the continuation of their marriage.

The term valid marriage is used but there are many other kinds of marriages which are recognized under the law of our country and as well as in Islamic law such as void (Batil) and irregular (Fasid) marriage. But there effect is not addressed in the Article 128 that whether a child born in result of irregular marriage would be legitimate or not. According to Mohammadan Law the “offspring of a void marriage are illegitimate”. Matters related to irregular marriage are broader in nature and vary from case to case. An irregular marriage before consummation has no legal effects but after consummation it confers some rights and obligations like the wife is entitled to dower, she has to observe the period of iddat in case of dissolution but at the same time law says that even after consummation in irregular (Fasid) marriage no rights of inheritance have been created. From all the study and research on legitimacy of a child in irregular marriage it can be said that because of rules of Muslim Personal Law any “child born in result of irregular marriage will have the status of legitimate child” but this is not the case in void marriage. In cases of irregular marriage it can become regular or valid marriage by removing the objection as the circumstances are.

### Role of time span in proving legitimacy of child

In Article 128(l) of Qanoon-e-Shahadat Order it stipulates a while limits that a toddler born after six lunar months of a wedding or earlier than the expiration of years of dissolution of marriage will be conclusive proof of legitimacy of a toddler. But the condition is that in case wherein a child is born after six months of marriage at the time he born he should be of age at which he is born which means he should be a pre-mature infant it isn't always viable that a baby born after six months of marriage have identical evolved organs like a baby born after 9 months of pregnancy (Trigiyatno, A., 2022).

In case of dissolution of a marriage child have to be born earlier than the expiration of two years whether dissolution takes place because of divorce or loss of life of husband. Another condition attached to it is that “mom have to continue to be unmarried” in case of dissolution of marriage. It method that if a toddler is born inside years after dissolution of marriage it need to be proved that mother remained unmarried it is a compulsion this means that that there may be no

danger of consummation or any sexual sex of mom with any man (Bahri, A. S., 2021).

### Legitimacy when conclusively presumed

In Article 128 the expression “conclusive proof” is used in a manner that birth during continuous marriage or a child born after six months of valid marriage or within two years of its termination shall be the conclusive proof of legitimacy. In Qanoon-e-Shahadat Order we find three expressions related to presumptions one is “May Presume”, “Shall Presume” and “Conclusive Proof”. As per Article 2(9) Conclusive proof means when one fact is declared by the Order to be conclusive proof of another the court shall regard such fact as proved on regard of the other proved fact and in this case court will also not allow evidence to be given to disprove the fact. So when one fact is conclusive proof of another fact it is not allowed by our law to be rebutted. Same is the matter in cases of legitimacy of child when it is conclusively proved by marriage or by other evidence.

### Concept of illegitimacy in QSO

Article 128 of Qanoon-e-Shahadat Order also briefly defines the concept of illegitimacy it says that if the husband refuses to own the child or the child was born after the expiration of six lunar months when the period of Iddat has come to an end and the woman also accepts that her period of iddat has ended so the child in that case born after six months will be considered illegitimate. In cases of Zina or adultery husband has to refuse the paternity before consummation with his wife.

### Proof of legitimacy of a child in Muslim Personal Law

Other than Qanoon-e-Shahadat Order Courts rely on the regulations of Muslim Personal regulation for finding out the topics in which legitimacy of a child is introduced in movement. When within the cases any confusion get up or ambiguity left because of Qanoon-e-Shahadat Order Courts shall practice regulations of Muslim Personal Law derived from Sharia.

Concept of “legitimacy or bastardy” is defined in Section 2 of The West Punjab Muslim Personal Law (Sharia) Application Act. When any rely associated with legitimacy of a infant or bastardy is available in question in Courts it shall be determined according to Muslim Personal Law (Sharia) within the instances where the events are Muslims. The Muslim Family Laws Ordinance, 1961 offers with issue of succession and preservation of minors in Pakistan with the

exception of Azad Jammu and Kashmir. The Muslim Family Law Ordinance (MFLO) Section 4 deals with Succession it states that in case of death of any son or daughter of the propitious (the person from whom a line of descent is derived on a genealogical table) whose succession is not open when his daughter or son were alive then the children (if any) of that son or daughter will be liable to receive the equivalent share in succession as if the son or daughter of that person will receive if they were alive. Section 9 of MFLO provides with rights of maintenance to child and also gives remedy in case when father fails to provide maintenance to his children. It states that in case of failure of father to provide maintenance to his child, the aggrieved person may file an application to Chairman seeking legal remedy. The Chairman to whom application was given will mandatorily constitute an Arbitration Council and specify the reasonable amount for maintenance of the child.

### **Paternity and Maternity**

Parentage is a legal bond between parents and children. Paternity and Maternity are two very important terms and are often used in cases related to legitimacy of a child so it is important to understand them. Paternity is the legal bond between father and the child while on the other hand maternity is a legal bond between mother and child. These legal bonds afterwards create obligations and rights of parents and children towards each other.

### **How maternity and paternity is established**

Mostly there aren't any doubts in regard to maternity as the female who offers start to infant is mom and Sunni Law acknowledges all the rights and duty get up in end result of maternity irrespective of the records that whether a infant born changed into a end result of valid, abnormal or void marriage. Even in cases of adultery and Zina Sunni Law establishes maternity to the lady who offers delivery to baby on this way he inherits from his mom best. But underneath Shia Law best start of a child to a female is not enough to establish maternity the child must be born in a end result of a lawful wedlock best then he might be entitled to rights given to him because of maternity. So in Shia Law the illegitimate baby cannot inherit from him mother both (Disemadi, H. S., 2019).

Paternity can most effective be installed when a toddler is born during non-stop a lawful marriage or is born in a end result of a lawful marriage. Marriage can be Valid (Sahih), or irregular (Batil) however it cannot be void (Fasid). If there may be no proof of marriage it

can be mounted with the aid of oblique proofs like circumstantial evidences, continuous cohabitation from a extended time or from acknowledgement from father in choose of child.

### **Acknowledgement of paternity**

Muslim regulation recognizes the organization of 'IKRAS' (acknowledgement) wherein the paternity of baby this means that his valid respectable from his father cannot be proved by way of setting up marriage between his dad and mom at the time of idea. Acknowledgement underneath Muslim regulation is a rule of sizeable regulation and no longer an insignificant rule of evidence.

The doctrine of acknowledgement is utilized in conditions where the paternity of a toddler can't be proved with the aid of the factum of marriage itself. Where there any doubt arises that the kid born is in result of lawful relationship between mothers and fathers of the child or there's any confusion regarding humans being married at the time when the child is conceived the Islamic Law allows acknowledgement of parentage to evidence legitimacy of a toddler.

In different phrases the doctrine of acknowledgement applies to instances in which there's uncertainty to marriage wherein it's miles neither proved nor disproved. As marriages in Muslim are performed by following simple rituals so sometimes there may be no proof of marriage so where there is no direct proof available in case of absence of witness (irregular marriage) or other evidence indirect proof can be used to prove marriage. Acknowledgement of paternity can be proved by presuming facts that one person treats a child as his on or openly acknowledge him as his legitimate child by this we can say that acknowledgement of paternity can be express or implied. It does not apply to cases which are of bastardy or adultery in which the child is illegitimate.

In order to give acknowledgement legal effect or for his acceptance by Courts there are some conditions which must be fulfilled;

- Acknowledgment must be based on good faith it may not be merely because of rendering for son ship but to accept the child as his own legitimate child.
- There should be at least 12.5 years of age gap between the persons; the father should have attained maturity who is acknowledging the child as his own legitimate offspring.
- The child should not be offspring of Zina or adultery.

- There are possible chances of the acknowledger and mother of the child to be legally married and the child conceived should be result of their lawful marriage.
- The infant acknowledged need to to now not be the kid of some other guy.

An acknowledgement once made cannot be revoked. But the child who's recounted is entitled to repudiate the acknowledgment while he has attained the age of maturity to understand the transaction.

### Muhammad Allah dad Khan v Muhammad Ismail Khan (1887)

Justice Mahmood held that in which marriage cannot be proved by direct proof and no legitimacy can be hooked up, Muslim regulation prescribes a means wherein the wedding and legitimacy can be hooked up as a matter of substantive law and this is acknowledgement of paternity.

### Does Muslim Law allow husband to deny paternity?

Islamic law permits husband to disclaim paternity but below some situations he can accomplish that. The Supreme Court ruled that the Muslim Personal Law did not vest husbands with the right to casually deny the paternity of a baby bore to him through their wives. A judgment issued by means of a two decide bench of Lahore High Court states that Children born throughout the subsistence of marriage are presumed to be valid.

Qanoon-e-Shahadat states that a husband can refuse to own the child but it does not describes any conditions under which the husband can deny paternity but in Muslim Personal Law it states some conditions and also gives a time frame in which husband can deny paternity. It stipulates time of 40 days that a Husband can deny paternity within 40 days of his child birth. This rule is helpful to avoid cases where people deny paternity just to avoid giving maintenance or share in inheritance. Here an important point to note is that only husband can deny paternity not just any random person because paternity is only established when the child is outcome of legal marriage.

If the husband refuses to own the child the burden of proof lies on him to prove that he is not his child. General Law is that when a child is born during a valid marriage is considered legitimate but if because of any reason husband denies the paternity he has to prove his stance. In case of Zina husband has to refuse paternity before consummation afterwards our law

does not allow him to deny paternity and the child will be considered his legitimate child.

In case of adultery law gives the right to husband to deny paternity but the burden of proof lies on him to prove adultery and if he cannot prove anything by evidence he can take oath to deny paternity by using an Islamic rule of Lian. Lian is an Islamic concept in which if husband cannot proof adultery by legal evidence he has to take an oath to refuse the child as his own.

### Limitations in Law related to legitimacy of child

In the wording of Article 128 of QSO the words "shall presume" are used which means that if a child is born during the time or under conditions as prescribed in the article is shall be considered legitimate unless contrary appears. Many judgments of the Supreme Court are also given by entirely depending on this fundamental which is wrong on many grounds.

Article 128 of QSO used the words of valid marriage it did not address the issues of legitimacy of a child who is born in result of invalid marriage. Invalid marriages are categorized into further two more categories namely; Irregular marriages (Fasid) and Void marriages (Batil). In contrast to this Muslim Personal Law addressed this difference and consider the children born in result of irregular marriage as legitimate but it does not gives the status of legitimate child to the children born out of lawful wedlock or in result of void marriage.

DNA evidence is permissible according to QSO but our Courts does not encourage its use and does not allow it in cases in which child is born in result of a continuous lawful wedding and basis for this they construct that the maximum efforts should be made in order to give the child the status of a legitimate children to protect him from evils of society.

### Presumptions of Legitimacy of Child in Islamic Law

In Islamic Law an infant can simplest be considered valid if he became born in result of lawful wedlock of his mother and father. Muslim jurists have agreed upon this reality that a baby born after six months of marriage is valid. There is not any risk that a toddler who's born before the final touch of six months of marriage can attain the status of a valid infant neither it is medically feasible. Furthermore in terms of legitimacy of a child who's born after dissolution of marriage of his dad and mom' different Muslim pupils have their personal interpretation on this regard which range on the idea of time.



Under the Mohamedan law a child born after 100 and eighty days and before the expiration of years of a lawful marriage is presumed legitimate. Basically Muslim law is divided into two main branches Sunni Law Schools and Shia law Schools these are furthermore categorized and are adopted by different countries according to their believes.

#### 1. Sunni Schools of Law are:

- Hanafi School
- Maliki School
- Shafi School
- Hanbali School

#### 2. Shia Schools of Law are:

- Ismailia's School
- Zaidia's School
- Jafari School

As we studied in Qanoon-e-Shahadat Order or in Muslim Personal Law the shortest period of being pregnant is one hundred eighty days or six months but in step with exclusive Islamic faculty of mind we come across to exclusive time frame below which if a child is born could be legitimate. This duration is after the dissolution of marriage both by divorce or with the aid of dying of husband, mother closing unmarried and there are not any possible risk of her having sexual sex with any man. Following are different period of instances given by means of one-of-a-kind fiqah's for legitimacy of a toddler:

- i) Shia law says that a toddler born inside 10 lunar months of dissolution of marriage is legitimate
- ii) Hanafi regulation says that a baby born inside two years of termination of the marriage is legitimate
- iii) Shafi and Maliki law says that a toddler born inside 4 years after dissolution of marriage is valid

#### Legitimacy of child in Sunni Law

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Sunni Law recognizes any child who is born during the valid marriage as a legitimate child. In case there may be no lawful wedlock between the parents of the child there is no manner that baby can be considered as a legitimate infant. Majority of Sunni Schools of law agreed upon that a baby born after six months of a valid marriage is valid and in case of dissolution of marriage baby born earlier than the expiration of two lunar years may be taken into consideration valid. Dissolution can be of any type both by means of divorce or by way of loss of life of husband. Except majority of Sunni Schools of law Shafi and Maliki Schools agreed that a baby born earlier than the

expiration of four lunar years after dissolution of marriage may be taken into consideration legitimate.

In Sunni regulation a child who is born for the duration of Valid (Sahih) and Irregular (Fasid) marriage is taken into consideration legitimate and is attributed with all the rights which can be given to a valid toddler in step with Islamic law.

Sunni Law does not recognize the child of a Void (Batil) marriage as legitimate and any child who is born in result of zina, fornication, adultery will also be considered illegitimate. In Sunni Law an illegitimate child have no right in inheritance from his father but he will have right of inheritance from his mother.

#### Legitimacy of child in Shia Law

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Shia Law is more strict in its rules in comparison to Sunni Law. According to Shia schools of thoughts only a valid marriage can be a conclusive proof to legitimacy of child. Jurists which comply with Shia regulation have unanimous opinion that a baby born after six months of marriage is lawful but after dissolution of marriage it's far mandatory that the kid should be born before the expiration of ten lunar months. Any infant who's born after ten lunar months of marriage may be considered illegitimate below Shia law.

In Shia regulation most effective Valid (Sahih) marriage is acknowledged and any toddler who's born in result of valid marriage might be considered legitimate. Shia schools of thoughts does not even consider child born from irregular (Fasid) marriage as legitimate neither it admit void (Batil) marriages. According to rules of Shia Law legitimacy through acknowledgment of paternity can only be allowed in case of proof of valid marriage. An illegitimate child has no right in inheritance from his father neither from his mother in Shia Law.

#### Concept of Legitimacy of a child in the light of Quran and Sunnah

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In Islam Allah Almighty commanded Muslims to present honor, admire and obey their parents. It is the right of mother and father to be cherished and revered however as we recognize in which there are rights there additionally duties. Children have the rights to be fed, clothed and provided with clothed and guarded until they reach to adulthood. Parents are also liable for the moral, ethical and the basic essential spiritual teachings.

The shortest length of gestation identified with the aid of Holy Quran is six lunar months, while the longest length for gestation is years. According to Quran and Sunnah the normal duration for gestation is 9 months.

The time span as mentioned in advance for the legitimacy of toddler that a child born after six months of valid marriage or earlier than expiration of years of dissolution of marriage may be taken into consideration suitable changed into deduced from Quranic Verses namely Surah Luqman and Surah Al-Ahqaf, specific translation of them are noted as follows:

**Surah Luqman 31:14, Translation:** “And we have enjoined upon man (care) for his parents. Their mothers bore them through hardship upon hardship and their weaning takes two years. So be grateful to Me and to your parents; to Me is the (final) destination.”

**Surah Al-Ahqaf 46:15, Translation:** “We have commanded people to honour their parents. Their mothers bore them in hardship and delivered them in hardship. The period of bearing and weaning is thirty months. In time when the child reaches their prime at the age of forty, they pray, ‘My Lord! Inspire me to always be thankful for your favours which You blessed me and my parents with, and to do good deed that please You. And make righteousness in my offspring. I truly repent to You, and I truly submit to Your Will.’”

From the translation of the two verses from Quran the length of being pregnant and breastfeeding is described. By evaluating these two verses we encounter that length of breastfeeding point out in Surah Luqman is of years which imply twenty four months and in Surah Al-Ahqaf period of bearing and weaning is noted thirty months. If we exclude twenty 4 months from thirty months final could be six months from right here Muslim Jurists and Laws found in Pakistan and broadly speaking nations interpret the minimum duration of gestation for baby to be born after marriage is six months and in this way a infant who is born after six months of marriage is taken into consideration valid.

Quran additionally tells us the evidence of legitimacy of a baby thru acknowledgment of paternity. A verse from Quran in this regard is stated beneath:

**Surah Al-Baqarah 2:233, Translation:** “Mothers may nurse (i.e., breastfeed) their children two complete years for whoever wishes to complete the nursing (period). Upon the father is their (i.e., of the mothers) provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed thorough her child, and no father thorough his child. and upon the (fathers) heir is (a duty) like that (of the father). And if you wish to have your children nursed by a substitute,

there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is seeing of what you do.”

Islamic law imposes strict punishment on adultery or zina. If a woman is found guilty of adultery or zina and child is born because of such conduct he will also have to bore the consequences and will be considered as illegitimate. Even though there is no fault of the child in being illegitimate but the society does not accept him even is Islamic law he has no right to inherit the property of the father. Under Islamic Law there is a concept of “*filius nullis*” which means son of nobody it is attributed to a child who is born out of a legal wedlock. This is explained in words of Allah in Quran in Surah Al-Isra, Surah Al-Fatir and in Surah Al-Najam translation is cited as follow:

**Surah Al-Isra 17:32, Translation:** “And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way”

**Surah Al-Najam 53:38, Translation:** “That no bearer of burdens will bear the burden of another.”

**Surah Al-Fatir 35:18, Translation:** “And no bearer of burdens will bear the burden of another. And if a heavily laden soul calls (another) to (carry some of) its load, nothing of it will be carried, even if he should be a close relative. You can only warn those who fear their Lord unseen and have established prayer. And whoever purifies himself only purifies himself for (the benefit of) his soul. And to Allah is the (final) destination.”

From the above verses we interpret that a child born in result of unlawful intercourse cannot be burdened on another as his legitimate child but he must be treated humanely. The child should not face the consequence of the sins committed by his parents as he has nothing to do with that. All these sources need interpretation to remove ambiguities present in them especially there is difference of opinion between Islamic schools of thoughts which will be discussed in detail here and the ideology behind them needs to be mentioned.

In a few judgments of Supreme Court it denied to permit DNA evidence entirely relying upon the Hadith Shareef that at the Day of Judgment humans might be called on by way of the name in their moms. This is a Zaiyf Hadith Shareef and has contradiction in its authenticity. It is typically quoted that on the Day of Judgment kids may be known as by name in their moms and at a few locations it's miles quoted that youngsters at the Day of Judgment will be referred to

as by way of call in their fathers. Hafiz ibnul Qayyim (R.A) in addition states, 'This Hadith is unsuitable for argument and more over it's far in contradiction with a Sahih (actual) narration.'

After thinking of the above it'd be understood that the more potent and more desired view is that on the Day of Judgment someone can be called out by means of the name of his father and not with the aid of his mom, as it's far substantiated by the Hadith of Sahih Bukhari and Sunan Abu Dawud.

### **Proof of Legitimacy of Child in the light of Medical Science**

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Medical science has been growing very rapidly various experiments are done for the betterment of mankind to facilitate people more. In presumptions related to legitimacy of a child medical science can play a vital role as these issues are directly linked with it. In old times when science was not much advanced and no technologies were introduced for determining legitimacy of child Courts have no options but to solve the matter by applying their judicial mind on the facts they see are as the circumstances are. In this situation there is sometimes room for mistake by any chance but with the help of medical technology legitimacy of a child can be proved accurately up to 99.99 percent.

As different Muslim schools of thoughts gives different time line for longest period for women to conceive baby after consummation with her husband. Maximum period for a child to be born after termination of marriage or after consummation is given by Shafi and Maliki Law of Four years. Here it is not mandatory that Muslim jurists mean by this period gestational time or referring to four long years of pregnancy which is medically not possible. Rationale behind this time is tried to interpret by using medical science.

### **Importance of Determining Length of Gestation**

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Determination of period of gestation is very important as it leads to further concerns such as determining the legitimacy of a child, inheritance, guardianship, genealogical line, legal heir and other legal issues. To use medical science properly in ensuring justice in cases of legitimacy of a child there is need to understand some medical terms first like in these cases the term "Pregnancy or Conception" is often used. Pregnancy or Gestation is a state when a woman carries embryo or fetus inside his womb for a particular period of time before delivery of baby. Whenever the topic of legitimacy of a child is under discussion presumptions can only be made after considering the

period of pregnancy that when a woman conceived the baby. Pregnancy occurs in result of sexual intercourse between a man and a woman. It is a process when sperm meets egg and forms zygote which further leads to different stages of development of baby.

### **Shortest and Longest Period of Gestation in Medical Science**

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It is very important to understand the shortest and longest period of gestation. According to Qanoon-e-Shahadat Order and Muslim Personal Law a child born after six months of marriage is valid. Medical specialists renowned the fact that a infant can be born after six months or 24 weeks of pregnancy and may survive however it's far rarely visible. It is possible by using medical technology to find out the exact possible date of conception which means if we see the age of sperm in female reproductive tract it depends on various factors like ejection, health of sperm but maximum possibility is of up to five days or slightly longer. The date of conception is not exactly same of the date when intercourse takes place pregnancy can take place after 2 to 3 weeks. Comparing this with law it is mandatory for courts to play their role very sensibly. There should be no chance of any mistake all the facts and possibilities should be kept in mind and investigated. To clear all the doubts in any matter relating to legitimacy of a child courts should allow more often medical evidence like DNA report.

According to Quran and Sunnah and from majority of renowned Muslim jurists shortest period of gestation is one hundred eighty days or six months. It may be that a infant born after six months of legitimate marriage is legitimate. Presumptions related to determining the longest period of gestation varies in opinion of different school of thoughts. Shafi and Maliki schools of thoughts argue for longest period of gestation which is four lunar years. Hanafi school of thought gives two lunar years and Shia school of thought gives only ten lunar months. These all are in case of termination of marriage that mother remaining unmarried after dissolution of marriage and a child born during this time he will be considered legitimate.

### **Possibilities for Longest Period of Gestation**

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The longest recorded pregnancy was of 375 days of a woman names *Beulah Hunter*. Only a few Islamic countries are using Shafi and Maliki Islamic School of thoughts ideology as a source to determine the legitimacy of a child. Following are some concepts of medically proved which are discussed which somewhere supports the longest period of gestation given by Islamic school of thoughts;



## Sleeping Fetus

One theory which I come across is can be of *sleeping fetus*. AL-raqid in general known as sleeping fetus is a concept which relates to length of pregnancy. It is a concept which supports the ideology of Shafi and Maliki school of thoughts it says that a fetus can be dormant in the reproductive tract and may wake up even years later by this it supports the theory of birth after four or at some places seven years (Maliki law) of dissolution of marriage. But this time period is rejected by many Islamic countries.

## Stone Baby

There is another very interesting theory of stone baby. It is a condition in which the fetus dies outside the womb. A woman can carry and survive with stone baby for several years through this we can construct the period of gestation and admit longest period of gestation given by Islamic school of thoughts. Possibility of having a stone baby is extremely rare but Islam covers all aspects of life so we can interpret that it is to save a woman from being abused socially or stigmatized due to any reason.

## Case Study

In recent researches a case of stone baby is reported by Chia-Ming Chang and colleagues in 2001 that when a woman who was 76 years old was admitted in a hospital because of the reason of tumor the surgeons unexpectedly found a stone baby in her abdomen. Her medical history was normal except she has suffered severe abdominal pain some past 50 years ago. There are many more cases reported related to concept of stone baby and be found easily in renowned medical journals.

## In Vitro Fertilization

Because of advancement in medical techniques it offers other artificial options such as In-vitro fertilization (IVF) it is a process which help people to conceive who have fertility issues. Pakistan being an Islamic country has laws which are in conjunction with Islam so it is very important to consider the point that whether IVF is allowed in Islam or not. It is absolutely fine to think about its Islamic perspective different scholars have given their opinion on it. Jamia Al-Azhar is recognized as world's oldest and renowned Islamic university and authorities of Pakistan have declared In-vitro fertilization legal until and unless it is conducted between legally married couples and no external aid is provided by a third party, some other limitations are also imposed on it but it is allowed.

## Case Study

Nandlal Badwaik, if we consider a case related to presumption of legitimacy where a couple was trying to conceive by artificial methods later on the husband dies (Arora, D., 2019). Afterwards the widow by using her husband's donated sperms get pregnant the question arises here whether the child born will be legitimate or illegitimate. To answer this question if we see in detail the Qanoon-e-Shahadat Order and Muslim Personal Law it says that A baby born in the course of the continuous of valid marriage or after expiration of six lunar months or inside years of dissolution of marriage is legitimate and one of a kind Muslim jurists have given us one-of-a-kind maximum limit for gestation period.

The new perspective is by using a medical technique sperm can be freeze for up to 55 years so what does it means that if a child is born by using this technique within two years of the maximum period given of four years by Shafi and Maliki schools of thought will be legitimate and afterward illegitimate? More legislation is needed to be done in this regard keeping in view the modern and advanced medical techniques.

## Use of DNA Test

Deoxyribonucleic Acid (DNA) evidence has revolutionized the world of medical science it can be used in various departments for the determination of relevant issues and can be very helpful for judicial proceedings to determine the guilty. It can play very significant role in ensuring justice. Deoxyribonucleic Acid (DNA) is a test carried out to determine the paternity of a child its accuracy rate is very high. It is a genetic material which is inherited to a child from his biological parents (Chaudhry, A. et. al., 2022). It is frequently carried out to determine the paternity of a baby, paternity refers to father and because the mom incorporates the kid so there is absolute confidence in determining the maternity so in most cases cases which is available in courts are related to willpower of the paternity of a baby.

The Muslim Jurists have prevalent the DNA test in establishing the paternity of a infant. It can be a totally strong proof to determine paternity. Muslim jurist also hold the opinion that DNA evidence is permissible and there is no prohibitive text found in Quran and Sunnah which is against the use of DNA test. But DNA evidence is criticized and is not allowed generally when there is existence of valid marriage (Cheema, S. A., 2015).

In Pakistan DNA evidence is admissible but DNA can be conducted in those cases only where the Court

grants permission. Courts does not allow DNA test where the child is born during the continuous of valid before expiration of six lunar months or within two years of termination of marriage mother remaining unmarried. In these cases if the father denies owning the child he has to establish enough evidence to prove that child is not his. Our Courts does not prefer DNA evidence even though it is admissible I have not come across many judgments where the courts are frequently allowing DNA test.

### **Reasons for Limited Admissibility of DNA Evidence**

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The Islamic legal means to establish legitimate genealogical relationship have established through Divine texts of Quran and Sunnah and consensus of the Muslim jurists. Beside, most of the modern scientific theories and advanced technology still there are no proofs of 100 percent accuracy in results no matter how much advancement is there but doubts can be still raised. In addition allowing DNA test easily with no strict conditions will invade people's privacy (Anjum, S., 2019).

There are some reasons for which Courts do not prefer DNA evidence such as condition of laboratories DNA test is needed to be done with special care by minor mistake drastic results can come. This has made Muslim Jurists strict about the DNA test because even after hard tries of scientists there is still possibility of inaccuracy. As the determination of paternity is a very sensitive issue many lives are dependent on it so there is no room for minor mistakes it can ruin many lives.

In most cases the focus of court is to legitimize the child so that he can have a family and better future but it is wrong on many grounds of morality and law. Sometimes decisions are based on public policies and public morality but instead of it decision should be based on the principle of justice.

DNA test is admissible in law of Pakistan through Article 164 of Qanoon-e-Shahadat Order and there is no prohibitive text found in Quran and Sunnah against the use of DNA evidence. Article 128 deals with legitimacy during continuous marriage but evaluation of DNA evidence is done in the context of Article 59 and 164. But there is need to do proper legislation related to all matters of DNA test. There should be special laboratories to conduct these tests so that no chances are left for inaccuracy. If performed correctly results of DNA test are 100 % correct and it can easily determine who the biological parents of a child are. The present legal framework of Pakistan does not cover all

the grounds and perspectives related to relation of DNA test and law of Pakistan.

### **Conclusion**

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To conclude this Article after all the above dialogue it is able to summed up that the presumption of legitimacy of a toddler relates to legitimate marriage. A child born for the duration of continuous of legitimate marriage no longer earlier than six months and before expiration of years of termination of marriage might be a conclusive proof of legitimacy of infant. However it is able to be rebutted through adducing evidence to the effect that no consummation were taken region among spouses. Law requires that presumption should solely be rebutted by using proof beyond all sensible doubts. The present work was carried out to look into the phenomena of presumption of legitimacy of child according to Pakistan's law and Islamic law and importance of medical science in this regard. This research work tried to look into the phenomena pertaining to an assessment of legitimacy of child in Islam and its enforcement in Islamic Republic of Pakistan. Some controversies between Muslim jurists are traced to the diverse interpretations given to the commonly cited dictum.

The baby born out of legal matrimony is measured unlawful in Muslim law. Some Islamic schools of thoughts recognize their rights but there is need of proper legislation in this regard. Only mothers alone should not be accountable for the responsibility of child, it should be shared by both parents.

The main focus of the study was to explain the Article 128 of Qanoon-e-Shahadat Order which is related to legitimacy and to explain the different time periods given for maximum term of legitimacy of a child in case of dissolution of marriage with the help of medical science. The opinion of Muslim jurists differs when it comes to longest period of gestation so if any exceptional case comes medical science can help a lot for that purpose it is tried to encourage use of medical techniques in our judicial system while determining legitimacy of a child. Furthermore DNA evidence is admitted but our Courts do not prefer it because of various reasons. DNA test can play a pivotal role in determining legitimacy of a child so proper legislation should be done to encourage its use.

### **Recommendations**

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Being a researcher it is quite difficult to give to the concluding remarks on this topic. As legitimacy of the child is a broader topic in its dimension and attract a lot of related issues. The core argument of my research

was to show the inconsistency in the laws of Pakistan related to legitimacy of child and to highlight the importance of medical evidence in these cases. Following are some recommendations made in this regard;

- In Pakistan we only find Article 128 of Qanoon-e-Shahadat Order, 1984 which directly concerns legitimacy of child but it has some structural flaws in it which need to be shaped again.
  - More laws dealing with legitimacy of child should be introduced there is lack of detailed legislation. Some recommendations this regard are that instead of dealing cases of legitimacy of child by using some articles of QSO or Muslim Personal Law there should be introduced a separate Act.
  - There is no fault of a child in all this situation even if he is declared illegitimate in that case there should be some rights of illegitimate child.
  - Legislation should be done for the rights of illegitimate children.
- Islamic provisions & legal framework present in Pakistan should be in more conformity.
  - Medical aspects need to be considered more seriously a lot of work & study is needed to be done in medical field in order to explain some specific issues as legitimacy of child is directly related to medical science.
  - Pakistani law is silent about acknowledgment of paternity but in Muslim Personal Law the doctrine of parentage is discussed.
  - More severe penalties should be considered if paternity is denied just for the sake of defaming mother or avoiding his duties towards child. Recently a large number of cases are observed in which the husband or father had denied paternity just to avoid his responsibilities towards the children or because of any personal grudge.
  - Use of DNA test should be promoted as the use of this technology might become a solution as to the determination of the paternity but there should be special medical laboratories for conducting these DNA & blood test as it is a very sensitive & crucial matter.

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