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**RESEARCH PAPER**

**Legitimacy of Child Under Qanun-E-Shahadat Order, 1984: A Legal Perspective**

**<sup>1</sup>Rehana Anjum\*, <sup>2</sup>Arun Barkat, and <sup>3</sup>Erum Shaikh**

1. Assistant Professor, University of Sindh, Jamshoro, Sindh, Pakistan

2. Assistant Professor, Institute of Law, University of Sindh Jamshoro, Sindh Pakistan

3. Assistant Sessions Judge/Senior Civil Judge, High Court of Sindh, Pakistan

**\*Corresponding Author:** rehana.anjum@usindh.edu.pk

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**ABSTRACT**

The legitimacy of a child represents a profound legal and social quandary in Pakistan, governed by Article 128 of the Qanun-e-Shahadat Order (QSO), 1984, as well as Islamic jurisprudence, and it is of special importance as far as issues of paternity, inheritance, guardianship and social identity are concerned. However, inconsistencies inherent in these laws have engendered contradictions regarding paternity determination, inheritance rights and the integration of scientific evidence. The main objective of this research paper is to analyze and critique Article 128 and sheds light on the interpretation ambiguities within it and why the judiciary shies away from DNA testing when legitimacy cases occur. Through intensive case study review, it sheds light on the courts' application of legitimacy, denial of paternity, based on both religious and legal bases. The bottom line is to stress the urgency of a valid test for determining legitimacy to do justice and deliver equity. Given socio-legal implications surrounding legitimacy – particularly in relation to inheritance, guardianship and identity – it argues persuasively for reform in evidence laws to harmonize Islamic principles, judicial reasoning and advancements in science. The research methodology is doctrinal and includes analysis of comparative case law analysis, judicial interpretation, and application of forensic evidence in legitimacy determinations. The research resulted that though Islamic jurisprudence emphasizes Iqar and marital legitimacy, the dynamic nature of legal systems requires more definitive positions on scientific evidence. In the end, this study recommends legislative amendments to clarify Article 128, judicial acceptance of DNA testing and public awareness initiatives to ensure that the legitimacy determination process is transparent and just; however, challenges remain.

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**KEYWORDS** Article 128, Contradiction in Article 128 of QSO, Judicial Interpretation, Legitimacy of Child, DNA Testing Incorporation

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**Introduction**

Legitimacy of child is an important legal and social issue of Islamic jurisprudence and Pakistani law, and it is of special importance as far as issues of paternity, inheritance, guardianship and social identity are concerned. The Pakistani law construct of legitimacy is generally regulated by Article 128 of the Qanun-e-Shahadat Order, 1984 (QSO), which presumes that a child born during a valid marriage or within two years after its dissolution is legitimate unless paternity is disclaimed by father within specified time. However, this provision has sparked a chain of legal ambiguities as it does not adequately cover progress in modern forensic science – DNA testing, particularly – in the assessment of paternity (Naseem, Shaheen, & Madni, 2023). Also, this article argues that the language itself of Article 128 is ambiguous and thus creates confusion at the time of interpretation.

Islamic law has always statutorily tied a child's legitimacy to marriage that is legal, since "the child belongs to the owner of the bed" (Al-Bukhari & Muslim). Therefore, a child born in a marriage is automatically presumed legitimate; the burden of disproving paternity, however, lies on the father and should be done within his time with Lian or mutual imprecation. However, scientific development such as DNA testing has created a contradiction in this conventional practice; which raises a contradiction between Islamic legal presumptions and the modern standard of evidence (Shukla, 2017). Pakistani courts have, recently, refused to accept DNA evidence in cases related to paternity disputes; with the reasoning that such evidence cannot override the presumption established under Islamic law and QSO.

In addition, Islamic law traditionally ties a child's legitimacy to lawful marriage, as the principle dictates that "the child belongs to the owner of the bed" (Al-Bukhari & Muslim). Thus, a child born within a marriage is automatically presumed legitimate, and the burden of disproving paternity lies on the father, who must do so through Lian, or mutual imprecation, within a specific period. However, scientific progress like DNA testing has challenged this traditional approach; creating a conflict between Islamic legal presumptions and modern evidentiary standards (Muzaffar, Khan & Karamat, 2017; Shukla, 2017). Recently, Pakistani courts have been hesitant to accept DNA evidence in paternity disputes; arguing that such evidence cannot override the presumption established under Islamic law and QSO. This judicial stance has created legal uncertainties, especially in cases of inheritance disputes, disputed paternity and birth registration (Naseem et al., 2023). Moreover, Muslim personal laws provide for the acknowledgment of paternity (Iqrar) as an alternative mechanism to establish legitimacy, but this too has been subject to contradictory judicial interpretations.

Considering the socio-legal implications (of legitimacy) in matters such as inheritance, identity and family law, this article critically analyses Article 128 of QSO: pointing out its contradictions and limitations. It engages with key case studies (and judicial precedents) that detail how courts have ruled on legitimacy, acknowledgment and paternity disputes. However, it argues for legal reforms that must include Islamic jurisprudence, judicial reasoning, and forensic science; therefore, a clear, just, and modernized legal framework is required to determine child legitimacy in Pakistan. Moreover, although the system before it is frustrating, legal development has to be implemented because it may yield better results.

## **Literature Review**

The notion of legitimacy has, for an extended duration, represented a fundamental principle within family law, especially in the context of Islamic legal traditions. In Islamic jurisprudence, legitimacy is predominantly ascertained by the presence of a lawful marital union between a child's progenitors (Shukla, 2017). This perspective is substantiated by the Qanun-e-Shahadat Order (QSO) 1984, notably Article 128, which posits that a child is presumed legitimate if conceived within a valid marriage or born within a designated timeframe subsequent to its dissolution (Naseem, Shaheen, & Madni, 2023). This presumption correlates closely with Islamic legal principles, wherein the acknowledgment (Iqrar) of the father assumes a pivotal function in affirming a child's legitimacy (Disemadi, 2019). However, despite these established frameworks, legal inconsistencies and ambiguities endure, particularly in instances where scientific evidence – such as DNA testing – challenges traditional conceptions of legitimacy (Bahri, 2021).

Research has consistently underscored that (in Pakistan and other Muslim-majority countries) Islamic law posits a child born to a legally married couple as legitimate. Sunni and Shia jurisprudence align on this presumption; however, they diverge on specific conditions, (for instance) the maximum period for a child's birth after the dissolution of marriage (Trigiyatno, 2022). The doctrine of acknowledgment remains crucial in this context—this doctrine permits a father's declaration to legitimize a child unless clear evidence disproves it. Although this doctrine functions as a safeguard against illegitimacy, it has been critiqued for potentially enabling fraud or false claims of parentage, particularly evident in the case of *Mohammad Khan v. Ali Khan* (2021).

The QSO 1984 functions as a foundational legal framework (in Pakistan) for the establishment of evidentiary rules pertaining to legitimacy; Article 128 explicitly asserts that birth within a valid marriage constitutes conclusive proof of legitimacy unless rebutted through particular legal mechanisms (Naseem et al., 2023). However, the judiciary in Pakistan has historically exhibited a resistance to the incorporation of DNA testing as definitive evidence, citing its perceived inconsistency with Islamic legal principles (*Laila Qayyum v. Fawad Qayyum*, 2019). This judicial reluctance engenders contradictions and inconsistencies, particularly because scientific advancements in the domain of paternity determination remain underutilized (*Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan*, 2015). Although the potential for integrating such scientific methods exists, the hesitation stems from deeply entrenched legal traditions and interpretations.

A comparative study of Islamic law and modern evidentiary standards (perhaps surprisingly) highlights significant differences between the two. While Islamic jurisprudence prioritizes marital legitimacy and the acknowledgment of the father, modern forensic science emphasizes biological parentage through DNA testing; this is evident in the work of Akram (2010). For example, the Indian Evidence Act mandates a 280-day period for a child's legitimacy following the dissolution of marriage. However, Islamic law provides for longer durations depending on the school of thought (Naseem et al., 2023). This discrepancy points to the need for a more harmonized approach that integrates religious principles with modern scientific advancements, because the case of *Shahu Lameeda v. Subaida Bebee* (1970) illustrates this necessity. Although the differences may seem pronounced, the potential for synthesis exists.

Despite near-certainty of DNA evidence in verifying biological parentage, courts have been hesitant to accept it (due to concerns that its inclusion might undermine sanctity of marriage and acknowledgment principles of Islamic law: *Mehbubunnissa Begum v. Mohd Yusuf*, 1950). While some scholars argue for its use as supplementary evidence to ensure justice in disputed cases (Batuk Lal, 2010), others caution that its widespread acceptance could erode foundational religious principles in family law. Given these challenges, Pakistan's judicial system must evolve to integrate DNA testing as a corroborative tool (alongside traditional legal mechanisms) to promote fairness and consistency in determining legitimacy. Legal reforms should aim to clarify Article 128 (to accommodate these forensic advancements) while preserving integrity of Islamic principles. Additionally, standardized judicial guidelines and greater public awareness could support a more balanced approach to legitimacy determinations, however, the path forward remains complex.

Various previous studies have indeed gone to an extensive length of exploring the respective legal and religious frameworks of legitimacy under Islamic law, yet the literature shows that very little research has been done on the integration of the modern

scientific advancements such as DNA testing within the traditional frameworks. Prior researches had focused their scales on the doctrinal and theoretical aspects of legitimacy but paid very little attention to how these legal principles were to be adapted to the current scientific realities. This paper bridges the gap by looking at the possibility of reconciling the traditional Islamic legal principles with the modern scientific evidence to see how Pakistan's legal system can progress without violating the religious aspect.

### **Material and Methods**

This study employed a comparative qualitative research methodology critically to examine the role of Article 128 of the Qanun-e-Shahadat Order, 1984 (QSO) in determining child legitimacy in Pakistan; however, it focused on its interaction with Islamic jurisprudence and modern scientific advancements (such as DNA testing). Although this research delves into legal frameworks, it also considers the implications of such advancements, because the intersection of law and science raises complex ethical questions.

### **The Socio-Economic Implications of Legitimacy, Inheritance, Guardianship, Judicial Reasoning, and Scientific Advancements in Pakistan**

Legitimacy (1), inheritance, guardianship, judicial reasoning, and scientific advancements create profound socio-economic ramifications in Pakistan; determining stability in families, financial security, identity in society, and access to justice. The legal basis of legitimacy under Islamic law (and) the evidentiary laws of Pakistan directly influence economic rights, social status, and responsibilities of the family for individuals concerned. The choosing of religious practices over scientific advancements by courts in issues of paternity, inheritance, and guardianship creates financial difficulties for those contesting these issues (Naseem et al., 2023); this raises fundamental questions about the creating a balance between modernity and tradition. Existing legal structures seek to clarify issues; however, the existing laws often fall short of addressing modern-day social needs because of their attachment to old ideas.

Legitimacy has a more subtle impact on the legal state of a child, his inheritance rights and family recognition. Under Article 128 of QSO (1984), a child born in wedlock is presumed legitimate, while a child born out of wedlock is rejected in acceptance by the father. This presents a socio-economic burden, as no illegitimate child is entitled to inheritance from his biological father, thus pressurizing the mother financially. Legal nonrecognition has often meant that these children live in precarious social and economic conditions and this ill affects their learning and a chance at schooling and gaining employment throughout their lifetime (Shukla, 2017). It is well documented that single mothers bear a disproportionate share of the economic burden of raising a child alone and unsupported by the father, which limits their economic independence and makes them relatively more dependent upon state welfare or family support (Naseem et al., 2023).

It has been proposed that laws on inheritance in Pakistan further prop up economic inequality, which relegates all but legitimate children to inheriting property from the father or his estate in Islamic law. Things take a severe legal and financial turn in cases of paternity disputes: courts accept no DNA evidence. If a father denies paternity, the parents or other parties contesting paternity must bear the burden of proof—which is often impossible, considering the requirement to receive support for the child. Courts have upheld inheritance on the basis of marriage, not the blood

relationship; this effectively includes children who could establish their fatherhood through scientific methods. Some of the children excluded from inheritance under the law become greater victims of wealth concentration within the respective family units while heightening economic disparity and limiting social mobility of those classified as illegitimate. The additional legislation of guardianship enforces even more dependence on finance, as fathers gain natural guardianship of legitimate children. Besides this, single mothers and illegitimate children are not supported by the law.

Since illegitimate children are often denied any financial help just because of their lack of legal affiliation with their biological fathers, this leaves the mothers to take full responsibility for the economical upkeep of the children. In multiplicity cases, even when paternity is contested, courts give preference to marital legitimacy rather than genetic veracity; that creates a vicious circle towards inability of children to get their share from biological fathers (Shukla, 2017).

Maternal guardianship, with its legal barriers, is a cause for a delayed entry to both education and medical aid that pushes the economically marginalized families toward further impoverishment. Thus legal improvements should be made to rectify such social and economic inequities by getting Islamic tenets into a more economical justice-oriented disposition. A system whereby DNA evidence joins other legal proof in the declaration of paternity and claims for the inheritance would help achieve a fairer court process in which an economic disadvantage of an individual based on outdated beliefs could be avoided. Judges should, however, ensure that the scientific evidence is not ignored on religiously interpreted grounds, particularly if one is to derive financial claims out of scientifically established paternity. Reform of guardianship laws permit mothers to obtain social and financial support for their illegitimate children, thus easing their economic burden and providing security to the families in need.

### **Mechanism Present in the Existing Legislative System for Determining Legitimacy**

The legal premise of legitimacy in Pakistan essentially relies on Islamic jurisprudence and statutory provisions, most notably encapsulated in Article 128 of the Qanun-e-Shahadat Order, 1984 (QSO). In essence, this law works on a firm presumption of legitimacy and gives priority to marital status (over biological connections). The method of ascertaining legitimacy may include not only judicial interpretation but inheritance statutes and methods of denial of paternity. Per the Article 128 of the QSO, 1984, a child born during a valid marriage-or, failing that, within a period of two years after its dissolution, while the mother is unmarried-is presumed legitimate (Qanun-e-Shahadat Order, 1984). As prescribed by law, such tested results may not contravene this presumption. A husband can only rebut the presumption of paternity upon very narrow grounds, within a reasonable time after the birth of the child. This remains a grey area since the law does not define a "reasonable" time, thus generating uncertainty in court cases (Naseem et al., 2023).

The Lian Process, as described under Islamic jurisprudence, allows the husband to refute paternity via mutual swearing (i.e., mutual cursing by husband and wife). If the husband wishes to bear false testimony that the child is not his, he must take an oath before the court. After that, the wife must decide whether to accept or refute that statement. If the wife selects to refute contest, the court separates the two and the child is declared illegitimate (Doi, 2022).

It is worth noting that, in contemporary cases, Pakistani courts very rarely affirm this process, often favoring statutory interpretations of legitimacy. The legitimate offspring are, however, meant to be registered with the greatest importance, requiring such processing through the National Database and Registration Authority (NADRA). Registration of births is said to be incomplete without the father's name, dignified judicial intervention arises when children born extramaritally are denied registration even under the name of their mother. While there is no unequivocal legislation governing the registration of illegitimate children in Pakistan, the very absence creates a huge vacuum in their legal identity and inheritance rights (Shaheen & Madni, 2023).

The inheritance laws of Islamic law only accept legitimate children as legal heirs, and therefore, illegitimate children cannot inherit from their biological fathers. Even if there are conclusive forms of scientific evidence for paternity, such as DNA testing, if a legitimate paternity cannot be established according to the rules of Article 128 or other Islamic law precepts, inheritance can never be warranted (Shukla, 2017). So it proves to be a financial burden on illegitimate children who are left out and most of the time dependent solely on their mothers.

### **Contradiction in the Language of Article 128 Of QSO 1984**

The Article itself, in these provisions, is full of contradictions. An evident contradiction lies between clauses (1)(a) and (1)(b), which casts a pall over the marriage the nationality. Clause (1)(a) states that a child born within two years after the dissolution of a marriage, provided that the mother is unmarried, shall be treated as legitimate, unless the husband disclaims paternity. Clause (1)(b), on the other hand, speaks of a child born after more than six months since a woman's iddat period was completed and hence would render the child illegitimate. The discrepancy raises a very important question in legal interpretation of legitimacy that one sees impinging on such convolutions of the family and private law hence counting for such an inquiry. The same is also equally valid for consideration regarding the effect of such inconsistencies on the rights of the family and social justice. While this piece of legislation seeks a definition so that certainty exists and that injustice does not result from a conflicting interpretation, the opposing shades of meaning tend to create evil that seeks realization in injustice. For this reason, students and practitioners alike must comprehend and understand the legal framework from a vantage point of realism.

“ARTICLE 128: The birth of a child during the course of a valid marriage serves as definitive evidence of legitimacy. (1) Specifically, a child born within the duration of such a marriage and not earlier than six lunar months post-marriage or within two years following its dissolution—provided the mother remains unmarried—shall be incontrovertibly recognized as the legitimate offspring of the husband. However, this assertion is contingent upon certain exceptions: (a) Should the husband explicitly refuse or be refusing to acknowledge the child; or (b) If the child is born subsequent to the lapse of six lunar months from the moment the woman has acknowledged the conclusion of the iddat period. (2) Notably, the stipulations outlined in clause (1) do not pertain to non-Muslims when such provisions contradict their religious beliefs.”

The first clause of Article 128, section (1)(a), distinctly states that a child born within two years post-divorce is legitimized, if the mother has not entered a subsequent marriage irrespective of whether the husband acknowledged the child. It is aimed to protect legitimacy where a marital dissolution has occurred such that a child, born soon after the divorce, does not erroneously find itself classified as an illegitimate one. The

reason for this legal presumption probably originates from an Islamic principle where the right of a child to a legal father is guaranteed so long as the legal marriage between his parents is on. This rationality is supposed to re-enforce the marriage bond, even though the marriage itself was dissolved. It is, however, imperative to look into the effect these provisions might give rise to with respect to family relations and social perceptions, because the convergence between law and morality is often consequentially intricate.

It clashes, however, with clause (1)(b) in that a child born after six months following the mother's iddat shall be illegitimate. Iddat is a period of time recognized under Islamic law usually lasting for four months after separation. During this duration, a woman waits to marry again with the purpose of removing all doubts regarding the paternity of her future progeny. Therefore, clause (1)(b) implies that if a child is born at least six months after the mother has already completed her iddat, that child is not legitimized by the former husband; however, the question then becomes regarding the ramifications it might have on paternal rights and responsibilities. Though this is supposed to clarify parental lineage, its hardline application might have severe social and legal repercussions for the parties involved.

However, these two provisions create a contradiction that allows both to be practically applied. In provision clause (1)(a), legitimacy is clearly asserted for a child born within two years after the dissolution of marriage, while in provisions clause (1)(b), the same child's legitimacy would be compromised if the birth occurs more than six months after the completion of the iddat. The tension between these two provisions is creating uncertainty in law, especially with respect to births occurring between six months two years after divorce, as the presumption of legitimacy may not come out as a bright-line rule. It then remained unclear as to whether the child was legitimate by virtue of clause (1)(a) or illegitimate due to clause (1)(b). This would indeed lead to the possibility of courts reaching contradictory decisions.

This contradiction therefore presents an acute challenge to the legal system in Pakistan (unless we are talking of child rights and paternal responsibilities). In considering the legality of a child fathered after the iddat period-a child conceived within two years from divorce, courts may find

Themselves adjudicating upon an ambiguous position in the legal text. Such legal ambiguity can lead to varying contradictory decisions, thereby detracting from the justness of the judicial determinations on matters such as paternity, inheritance and child support. The ambiguity is further compounded when Islamic case law allows interpreters to consider extended gestation periods, particularly under the Maliki sect, which allows for a possible four years of gestation. Although it may be obvious that the two-year presumption applies literally under Article 128, this is not so clear-cut in the diversities of opinion inherent to Islamic law itself, which would present hurdles to application in the ordinary courts. There exists the dire need of deliberating such a fundamental contradiction (which requires purposeful attention) and reforming Article 128.

An acceptable and practical theory could be to ensure the adequate harmonization of the provisions outlined in clauses (1)(a) and (1)(b) so that inconsistencies are effectively eliminated. Clause (1)(b) should be changed in such a way that it accommodates the fundamental principle established in clause (1)(a); namely, that a child born within two years after a divorce should be presumed legitimate in any case, regardless of whether the iddat period is completed. That change would not only simply

render the law consistent but would also strongly harmonize legal presumptions with the wider purpose of safeguarding social stability, as well as the rights of children in divorce circumstances.

While the presumption of legitimacy is supposed to be grounded in legal thought within a span of two years from dissolution, it is different science. On an average, the human gestation period spans the first nine months; hence the credulity of saying that two years is not only strange but also apart from scientific reasoning. This seems to have Islamic jurisprudential underpinnings-as some schools allow for longer periods of gestation-however this has nothing to do with a sound medical basis, producing a schism between the medical and legal settings.

Judicial interpretation in paternity denial cases has become a patchwork bag, primarily because the definition of a "reasonable time" remains ambiguous. Some courts adopt a hard-and-fast position in regard to time limits, while others are looser, permitting almost unreasonably prolonged durations for denial. All of which brings in an element of inconsistency into the adjudication of legitimacy. While DNA testing would, in the long run, be a really viable solution for the affirmation of paternity, its effectiveness in Pakistani courts is limited. By virtue of Article 128, it is not awarded the status of conclusive proof, and such situations pose a risk to the security of the child's future. This allows men to be compelled, under decree, to maintain children they did not father, while biological fathers face innumerable difficulties in pursuing their rightful claims.

The intricacies surrounding Islamic law in inheritance law are very serious, for it provides that only legal children are entitled to inherit from their fathers. Article 128 posits a presumption of legitimacy that might run nearly irreconcilably against the principles of Islamic law in succession disputes. For example, it is clear that in such disputes DNA testing would explicitly disqualify a non-biological child from inheriting; however, legal presumptions arising under the QSO would deny this. In addition (and this is very important), the article seeks not to look into the legal status and rights of illegitimate children. Though Islamic jurisprudence denies illegitimate offspring the right to inherit from their fathers, unclear definition in Pakistan hampers their future rights there, thus piling additional legal complexities.

### **Position of Courts in Pakistan while Determining The Legitimacy Of Child**

In Pakistan, the courts have very consecutively been maintaining a hardline position in any matter dealing with legitimacy, mainly relying on Article 128 of the Qanun-e-Shahadat Order 1984 and Islamic jurisprudential principles. The judicial case law indicated considerable support of presumption of legitimacy, giving honor to marriage over blood evidence in instances of paternity disputes. These methodological approaches sit very well with Islamic legal doctrines, which posit that every child born within the bonds of a legitimate marriage stands as the son or daughter of the husband unless the husband repudiates the child by Lian. However, the court's opposition to the introduction of modern forensic methods, including DNA tests for determining legitimacy, could have led to systems contradiction especially on inheritance matters and paternity issues (Naseem, Shaheen, & Madni, 2023). Yet these contradictions, however baffling it may be in a given instance, must be understood with reference to the very principle guiding the judgments-an inter-relation of traditional values and modern embodiment into the very judiciary system. This very double-facedness continues to evolve into the debate around legitimacy in Pakistan and thus necessitates an epitome of understanding regarding the two streams of law and social customs.



In the case *Muhammad Allahdad Khan v. Muhammad Ismail Khan* (1886), the court said that acknowledgment of paternity could not operate as a categorical negation of the available evidence of illegitimacy. The judgment also laid down a principle of great importance—that is, while basic Islamic law sanctions acknowledgment (*Iqrar*) as an act of legitimating a child, such acknowledgment must not contravene with objective legal and scientific truths. Also, in the case of *Mehbubunnissa Begum vs. Mohd Yusuf*, the court held that mere acknowledgment is insufficient for establishing paternity unless there is corroborating legal or circumstantial evidence (*Mehbubunnissa Begum v. Mohd Yusuf*, 1929). The judgments duly reflect the judiciary's careful approach towards enshrining acknowledgment doctrines in ensuring that claims of false or wrongful paternity do not interfere with inheritance rights and family systems. In practice, this balancing indicates an appreciation for the complex interplay of legitimacy issues and the need for a robust evidentiary standard.

The rather limited acknowledgement given to scientific evidence is also exemplified in a few judgments. For example, in the case of *Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan*, the Supreme Court stated that a child born out of a valid marriage cannot be dispossessed of its legitimacy by the husband on whom the supposed challenge is being leveled so that in such matters, legitimacy shall have to override DNA tests (*Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan*, 2015). In this context, it explained that, in Shariah, DNA testing cannot act as *res gestae* proof for paternity; it violates the established presumption of husband-father status unless and until the husband denies it through an appropriate process of law. That declaration was cemented in the case of *Najmul Hassan & Others v. Mst. Romana Qamar* (2020), where the court also dismissed a father's application for DNA testing, thus validating the idea that Islamic legal presumptions are more potent than modern forensic evidence (*Najmul Hassan & Others v. Mst. Romana Qamar*, 2020). These judgments have severe consequences for those fathers who wish to dispute paternity based on scientific evidence, as it denies them the opportunity to challenge legitimacy claims through DNA testing.

The stance of the Pakistani courts regarding legitimacy has overarching implications for disputes over inheritance, more specifically how the presumption of legitimacy influences a child's right to inherit. The above-mentioned case of *Laila Qayyum v. Fawad Qayyum* (2019) decrees that the right to inherit cannot be nullified nor negated based on DNA evidence alone. This establishes the firm place of legitimacy in the context of marriage rather than biological proof (*Laila Qayyum v. Fawad Qayyum*, 2019).

In this instance, though, the decision dismisses a father's plea to deny a child a share of his inheritance based on DNA tests, thus making clear one of the court's tendencies to lean towards religious teachings rather than towards scientific progress. This case reflects a more general trend in judicial practice, evidencing a repetition where scientific findings are overlooked in preference to a more obviously religious interpretation. Such a trend is baffling and breeds legal problems surrounding contested inheritance suits, which, in some extreme circumstances, may pose a problem in resolving the dispute.

The courts have, roughly speaking, resisted casting DNA tests as a pertinent piece of evidence in favor of certain cases indicating that a slow but gradual shift toward a certain conjuncture is underway. Judges of the courts in a certain number of cases in the lower courts have directed DNA testing in unusual situations—parents contesting

legitimacy because, among others, marriage registers did not exist-together with conflicting testimony. However, this shift has not been uniform across jurisdictions, and the overall situation continues to evolve.

On the one hand, the overall judicial stance on legitimacy shows a remarkable support for orthodox Islamic views, and it opens only limited doors to forensics. This is a similar situation that caused legal dilemmas with regard to those who attempt to contest paternity through scientific means or offspring disputing inheritance rights when biological ties were challenged. With the transformation of Pakistan's legal framework, there comes a legitimate need to harmonize Islamic customs with modern forensic proof; thus, it becomes imperative for the courts, while making legitimacy decisions, to strike a balance between religious tenets and modern acceptable law.

### **Gaps in the Existing Legal Framework in Determining Legitimacy**

Nonetheless, there exist a number of lacunae and contradictions in the laws of Pakistan with respect to the determination of legitimacy, especially in the denial of paternity issues in the light of scientific developments and inheritance claims. Could refer to it as the biggest gap arising out of the long absence of any particular mechanism providing for the denial of paternity? Among them, the presumption of legitimacy applies under Article 128 of the QSO, 1984, but does not define the term "reasonable time" within which the denial of paternity must occur. While Courts have varied widely in interpreting these provisions – ranging by allowing for years the denial of paternity from the date of birth to disallowing men totally from contesting paternity at all (Naseem et al., 2023) – such disorientations create legal conflict leaving fathers no chance to successfully dispute paternity claims.

The second most significant gap is perhaps the non-recognition of DNA testing in paternity litigation. An example is the fact that Pakistani courts completely reject DNA evidence as proof of paternity, stating that under Islamic law such evidence cannot supercede issues of marital legitimacy (Shaheen & Madni, 2023). This is in complete contrast to other legal systems such as those of Malaysia and Indonesia, where DNA testing is already admitted in the court in paternity disputes. Because of such a forensic exclusion, biological fathers, therefore, may sometimes be forced to provide for children who are not even biologically theirs, whilst children who are capable of proving paternity through DNA tests do not find any acknowledgment in law (Shukla, 2017).

A major shortcoming of the current law is the inconsistency between different provisions of Article 128, where clause (1)(a) states that a child is assumed to be legitimate if born within two years from the dissolution of a marriage. However, clause (1)(b) presents an obstacle to this premise, concluding that if a period of six months has lapsed after the iddat period, then the child can be taken as born of illicit union (Qanun-e-Shahadat Order, 1984). This going inconsistency leaves a great deal of doubt on establishing parenthood. Such indecision leads to divergent interpretations by the courts, thereby denying the child any legal protection under Pakistani law. Under the principles of Islamic law, a child born out of wedlock has no legitimate recognition by the biological father, thus providing grounds for non-recovery for the biological father. There is absolutely no legal machinery enabling illegitimate children to sue for maintenance, get financial support, or even claim inheritance. Such illegitimacy becomes, for all intents and purposes, a stigma that keeps the child in a lower economic position (Doi, 2022). Though countries like Turkey and Egypt provide for financial support for illegitimate children, Pakistan's legal framework stands adamantly silent on the problem.

Consequently, the ambiguities existing within the law surrounding inheritance disputes would compound the troubles for these families. The courts have persistently ignored DNA evidence in inheritance matters. This means that even if a child establishes paternity through scientific means, they could still be unfairly denied their due inheritance rights. The unwillingness of the legal system to merge forensic science with inheritance law makes a breeding ground for injustice against biological children whose rights are, in essence, diminished (Shukla, 2017). In general terms, the basic legal framework in Pakistan consists of Islamic principles; however, modern-day advances with the likes of protection of DNA testing and child welfare statutes are yet to be embraced. Thus the lack of consistency among judicial interpretations, mixed with the absence of legislative changes, is a catalyst for legal ambiguity and socio-economic hardships for people caught within paternity disputes, inheritance claims, and child legitimacy matters. While these challenges are very real, the evolution of Pakistan's legal structure is vital in marrying Islamic texts with modern scientific and legal approaches and thus ensuring fairness and justice for all parties involved.

## **Conclusion**

In this Research it is explained how Article 128 of the Qanun-e-Shahadat Order, 1984 (QSO) is a big legal problem in Pakistan (1) balancing between Islamic principles and modern forensic science. Islamic law assumes legitimacy in marriage, but contradictions in article 128 create legal ambiguities especially with regards to denial of paternity and inheritance rights. Courts in Pakistan say matrimonial legitimacy is above all DNA evidence, which leads to contradictions in paternity cases. Illegitimate children face social and financial disadvantages as inheritance laws deny them legal recognition. Moreover Courts' hesitation to recognize scientific advancement makes it difficult to determine legitimacy. Reforms can clarify article 128 and provide for DNA testing (2), set time limits for paternity denials and financial protection for illegitimate children. The Article suggests that Alignment of Islamic principles with forensic science may create a just legal system, where justice can be served in cases of legitimacy, inheritance and custody while retaining religious sanctity and challenging status quo.

## **Recommendations**

In order to address the loopholes and contradictions in the provisions of Article 128 of the Qanun-e-Shahadat Order (1984), it is necessary to amend these loopholes ambiguously. This should include reducing the presumption of legitimacy from two years to a scientifically correct period of 9 to 12 months and giving the courts 60 days to deny paternity. Furthermore, clear guidelines for the court should be set up to ensure uniformity of the court's ruling on legitimacy, taking into account forensic evidence along with Islamic principles. DNA testing should be acknowledged as the most important evidence of paternity and allowed accordingly. The rights of illegitimate children should be acknowledged and financial protection and inheritance rights should be provided where applicable. Apart from this, judicial training programs should be conducted for the judges to educate them about a few advancements of forensic science. Such reforms would bring Pakistan's legal system abreast with modernity and yet protect Islamic jurisprudence to ensure fairness and justice, in establishing legitimacy.

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