

DNA EVIDENCE AND PARENTAGE DISPUTES IN PAKISTAN: RECONCILING SCIENTIFIC PROOF WITH ISLAMIC FAMILY LAW

Muhammad Ahsan Iqbal Hashmi

Assistant Professor of law

Bahauddin Zakariya University Multan (Vehari Campus)

ahsanhashmi@bzu.edu.pk

Anwar Sarwar

Department of Law

Bahauddin Zakariya University Multan (Vehari Campus)

anwaarch360@gmail.com

Saif Ur Rehman

Department of Law

Bahauddin Zakariya University Multan (Vehari Campus)

Saidurrehmanbrw60@gmail.com

Muhammad Khalid (Corresponding Author)

Department of Law

Bahauddin Zakariya University Multan (Vehari Campus)

muhhammadkhalid1098@gmail.com

Abstract

In this article, scientific advancement, Islamic law and Pakistani family law is discussed in relation to paternity issues especially on the question of acceptability and validity of any DNA evidence. It critically looks into the prevailing legal situation saga as the case in Pakistan that broadly excludes the final status of the DNA test in matters whereby paternity of such a child is questionable, particularly when the given child is born in marriage. The natural state of the law is associated with the Islamic principles, especially the ideology of walad lil-firab of assuming the legitimacy of a child born in a valid marriage and emphasizes the issue of paternity on the part of the husband.

This assumption, which is historically used to preserve family peace and social balance, is entrenched with the judicial thinking and system of law in Pakistan. But there is a serious threat to this established model presented by the emergence of DNA testing as a scientifically coherent and available method of quantifying biological relations. This essay explains that the factual truth and legal assumptions are increasingly mismatched because key evidence regarding cases involving mothers is not used or it is ignored. This conflict does not only weaken the authenticity of the court conclusions but also hurts the welfare and the rights of the children particularly, those cases to do with identity, inheritance and the parental obligations. The wider Islamic jurisprudential tradition is also addressed in the study, where the classical beliefs were consolidated without the reference to the principles of scientific approach, including DNA testing. This process of adaptation and interpretation in Islamic law exists with itself, according to the beliefs of the ijthihad (independent reasoning), maşlahā (public interest) and darūra (necessity) according to the analysis of the Jurisprudence literature and contemporary reformist knowledge. And the paper asserts the same on such basis. These values offer grounds on useful DNA evidence, which fails to shake the ethical premises of the Islamic law.

A significant element of comparative legal analysis constitutes a main part of the present paper and emphasizes the increment of the use of DNA testing in the systems of the family laws of other Muslim-majority states such as Tunisia, Egypt, and Malaysia without sacrificing the adherence to Islamic values. These are just some instances that show that it is possible to develop legal system in such a way that it does not interfere with religious belief by applying scientific truth. Further, the paper reviews the Pakistani case law touching on the case to demonstrate tendency of judicial equivocation and reticence, which is usually

characterized by absence of clarity in law and procedural interpretation. International aspect of human rights has also been covered. Being a signatory to United Nations Convention on the Rights of the child (CRC), Pakistan owes a duty to safeguard the right to the identity of child such as the right to know and care about the parent. Refusing to apply DNA testing in maternity conflicts, in fact, may result in the infringement of the aforementioned rights, especially when it comes to selective inheritance, custody, or child care. The paper concludes that judicial and legislative renovations that acknowledge the written worth of DNA in paternity cases, without lack of character of Islamic law, should be given. Such reforms are aimed at properly striking the balance between religious orientation to truth and human rights and modern scientific evidence and truth in order to promote justice, consistency of laws and safeguard of helpless groups, foremost, children. Through this, Pakistan is making a step forward to a more fair and reasonable family law system apt to the demands of the current society.

Key Words:

DNA, Malaysia, paternity disputes, Tunsania, Rights of the Child, inheritance, Parental Responsibilities, Child Maintenance

Introduction

In this modern age of scientific innovations, DNA testing has been developed as the certain way of ascertaining any level of biological relations as far as in the issues of paternity and parentage are concerned. Genetic evidence has been widely used by courts worldwide to authoritatively settle issues on parentage and family feuds such as child support and legitimacy.¹ Nonetheless, there are tricky issues involved in the use of DNA evidence in courts of lobbyist religion. There is no better place to see this strain than in the case of Pakistan where family law is largely influenced by the provisions of the Islamic faith especially those provisions that relate to lineage (nasab), marital assumptions about paternity and also when it comes to the equality of the family as a unit.²

In classical Islamic law, the issue of parentage can be determined based on very strong assumptions in the first place, which is the rule of walad lil-firash also known as a legal maxim which assume that a child born within a valid marriage is the spouse of the wife.³ These teachings serve to guard against social instability and avoid open scandal as it rather ensures stability in the family unit than biological inevitability. DNA testing on the other hand brings with it a paradigm that is based on empirical accuracy and objective confirmation which tends to conflict with these religiously based legal presumptions.⁴

This conflict has acquired greater meaning in the recent past in Pakistan as litigants bring in the use of DNA evidence in family courts especially on matters of paternity squabbles, refusal to grant maintenance, and even cases of inheritance. Even though the legal system of the country is based on Islamic law and the common law, scientific evidence that the family law is based on is not settled.⁵ The Qanun-e-Shahadat Order, 1984 (QSO), is the law regulating matter of evidence, does not give DNA evidence provision directly to the family disputes and the court has taken conflicting positions regarding the same.⁶ In other more prominent cases, courts have refused to accept or to

¹ "Three Decades of DNA Evidence: Judicial Perspective and Future Challenges in India | SpringerLink," accessed June 19, 2025, https://link.springer.com/chapter/10.1007/978-981-13-1583-1_11.

² "Karamonmehdi-Rev," n.d.

³ "Mohammed Hashim Kamali | ConstitutionNet," accessed June 19, 2025, <https://constitutionnet.org/user/jakyxodih>.

⁴ "PATERNITY BETWEEN LAW AND BIOLOGY: THE RECONSTRUCTION OF THE ISLAMIC LAW OF PATERNITY IN THE WAKE OF DNA TESTING - Shabana - 2012 - Zygon® - Wiley Online Library," accessed June 20, 2025, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9744.2011.01246.x>.

⁵ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (BRILL, 2005).

⁶ "Qanun-e-Shahadat-Order-1984," n.d.

use DNA tests in cases where it is inconsistent with Islamic teachings citing the sanctity of nasab and the assumption of legitimacy.⁷

This judicial ambiguity means a lot in relation to the delivery of justice. On the one hand, declining the usage of well-grounded scientific evidence can lead to the unfair conclusions, especially regarding the maintenance with the female partner or the identity of children, whose biology is under threat.⁸ Conversely, uncontrolled application of DNA evidence may generate criticisms against the fundamental Islamic norms of safeguarding of family honor and the assumption of legitimacy.⁹ The law is therefore confronted with a total dilemma on whether to set the course in the interests of more empirical truth, or to maintain a stabilizing principle of doctrinal continuity. In doing so the paper has attempted to bring out an answer to this dilemma, by analyzing critically the legal, religious and ethical aspects of DNA evidence in parentage disputes as applied in the Pakistani context. It will look into the level in which the existing statutory and judicial interpretations are favorable or unfavorable to the inclusion of DNA testing to the law of the family. It will also be involved in comparative jurisprudence of other Muslim dominant nations like Egypt, Malaysia and Tunisia who courts and legislatures have battled over similar questions.¹⁰ This discursive assessment, the paper argues in favor of principled framework, which accommodates both the epistemic soundness of scientific evidence and normative interests of Islamic law.

The structure of the paper is as follows. The next section provides an overview of Islamic legal doctrines governing paternity and legitimacy. This is followed by a detailed examination of Pakistani statutory law and judicial decisions concerning DNA evidence. The paper then situates Pakistan's approach within a comparative framework, analyzing how other jurisdictions have responded to similar challenges. Finally, the paper makes the case for reform both judicial and legislative—that would allow for the cautious but consistent integration of DNA evidence in parentage disputes, without undermining the essential values of Islamic family law.

Islamic Legal Framework on Paternity and Legitimacy

Islamic law (*fiqh*) places immense emphasis on the preservation of lineage (*hifz al-nasab*), viewing it as one of the essential objectives (*maqāṣid al-sharī'ah*) of legal and moral order. The rules relating to paternity and legitimacy are, therefore, designed not merely to establish biological connections, but to secure family honor, inheritance rights, and societal stability. Classical jurists across the major Sunni schools—*Hanafī*, *Maliki*, *Shafī'i*, and *Hanbali*—developed doctrines that presumed a child born within a valid marital union to be the legitimate offspring of the husband. This presumption, known as *walad lil-firāsh* (the child belongs to the marital bed), continues to form the cornerstone of Islamic family law.¹¹

⁷ "Josh and Mak International," accessed June 20, 2025, <https://joshandmakinternational.com/recent-cases-on-dna-paternity-testing-in-pakistan/>.

⁸ "DNA Evidence in Pakistani Courts: An Analysis | SAHSOL," accessed June 20, 2025, <https://sahsol.lums.edu.pk/node/12815>.

⁹ "The Importance of the Evidence of DNA in Islamic Jurisprudence," n.d.

¹⁰ "Modernizing Muslim Family Law: The Case of Egypt | Oxford University Comparative Law Forum," July 27, 2017, <https://ouclf.law.ox.ac.uk/modernizing-muslim-family-law-the-case-of-egypt/>.

¹¹ Ayman Shabana, "Islamic Law of Paternity and DNA Evidence," *Islamic Law Blog* (blog), June 28, 2021, <https://islamiclaw.blog/2021/06/28/islamic-law-of-paternity-and-dna-evidence/>.

1. The Presumption of Paternity (Walad lil-Firāsh)

The walad lil-firash rule is grounded on various hadiths, and one of them is the most well-known one: “The child belongs to the [marital] bed and the adulterer gets the stone,”¹² it shows that Prophet Muhammad was willing to protect the family organization and prevent social conflict related to paternity. The following doctrine is based upon the following points, that is to say, in the event of the birth of a child at least six months after the consummation of the marriage, and within two years, (or in other opinions within four years), of the dissolution of the marriage, such a child shall be deemed and presume to have resulted therein as having been lawful child of the husband.¹³ This expectation is virtually conclusive and cannot be defeated just through suspicion or personal uncertainty going by the “Hanafi school” which is dominant in Pakistan.

The rationale of this principle is multiple, it saves the woman against slander, it saves the social identity of the child, and it impedes the prying into the internal personal sexual relations. Notably, it also means that the right of the husband to challenge paternity is put to an end and it cannot be done at any whims. The litigation should be within a legal procedure referred to as *li'an*.

2. The Procedure of Li'an

The doctrine of *li'an* (mutual imprecation) is derived from the Qur'an (24:6–9), which provides a mechanism for the husband to deny paternity where he accuses his wife of adultery but lacks four witnesses to prove it. In such cases, both spouses take solemn oaths invoking divine curse upon themselves if they lie. If the procedure is completed, the marriage is dissolved and paternity is legally denied.

In practice, however, *li'an* is rarely invoked in Pakistan, partly due to its procedural complexity and social stigma.¹⁴ Even where invoked, the implications are profound: while it may exonerate the husband from criminal or financial liability, it may also render the child legally fatherless (*walad al-zinā*), a status with lasting legal and social consequences. Islamic law, therefore, treats such outcomes with caution, emphasizing the gravity of undermining established paternity.

3. Modern Tensions: Scientific Evidence and Traditional Doctrine

The development of DNA technology has introduced a new dimension to the discussion on legitimacy. Scientific certainty potentially contradicts the moral presumptions of Islamic law. Yet traditional jurists have consistently prioritized *nasab* over biological truth, often resisting calls to reinterpret lineage through a genetic lens. The fear is not unfounded: unrestricted use of DNA tests may encourage disputes over settled parentage, destabilize families, and challenge the Qur'anic prohibition on accusing chaste women without strong proof (Qur'an 24:4).¹⁵

Contemporary Islamic scholars and modernist jurists remain divided. Some argue for limited use of DNA testing, only to corroborate—not supplant—classical rules.¹⁶ Others contend that scientific advances must be accommodated to protect the rights of the child and ensure justice in exceptional cases, especially in matters of rape, abandonment, or disputed identity.

Pakistan's courts have largely followed the traditionalist path, invoking *walad lil-firāsh* and resisting DNA-based rebuttals of legitimacy unless *li'an* is observed. However, this position is

¹² “Sahih Bukhari : Book of 'Divorce,’” accessed June 20, 2025, https://www.sahih-bukhari.com/Pages/Bukhari_7_63.php.

¹³ “Outlines of Islamic Jurisprudence | ALSI,” accessed June 20, 2025, <https://nyazee.org/product/outlines-of-islamic-jurisprudence/>.

¹⁴ “Karamonmehdi-Rev (1),” n.d.

¹⁵ Shabana, “Islamic Law of Paternity and DNA Evidence.”

¹⁶ “(PDF) Human Rights and Islamic Law - Punishments and Death Penalties,” accessed June 20, 2025, https://www.academia.edu/12269429/Human_Rights_and_Islamic_Law_Punishments_and_Death_Penalties.

increasingly contested in light of international human rights norms, advances in forensic science, and rising demands for judicial consistency.

Pakistani Legal Framework and Judicial Trends on DNA Evidence

The Pakistani legal system is a hybrid of Anglo-common law and Islamic legal principles, with personal status laws—particularly family law—being heavily influenced by classical Islamic jurisprudence. The result is a framework where modern evidentiary tools, such as DNA testing, must coexist with religiously inspired doctrines like *walad lil-firāsh* and *li'ān*. This section explores the statutory regime governing evidence in Pakistan, the position of DNA evidence within it, and judicial trends that have emerged in the treatment of DNA in cases involving paternity and legitimacy.

1. Statutory Position: Qanun-e-Shahadat Order, 1984

The principal statute governing evidentiary rules in Pakistan is the “**Qanun-e-Shahadat Order, 1984 (QSO)**”, which replaced the Evidence Act of 1872. While largely modeled on common law principles, the QSO contains certain amendments to conform with Islamic injunctions. It does not explicitly mention DNA testing or genetic evidence. Section 59 of the QSO provides that facts not otherwise provable by oral evidence may be established through expert testimony; however, it does not clarify whether scientific methods like DNA analysis fall within the scope of admissible expert evidence.¹⁷

Moreover, the QSO remains silent on the standard for challenging paternity through scientific means. In practice, courts have interpreted this silence in light of Islamic principles. The result has been judicial reluctance to permit DNA evidence to rebut legally presumed paternity, except in extraordinary cases involving criminal liability or lack of alternative evidence.

2. Key Judicial Decisions

Pakistani courts have developed a cautious jurisprudence regarding DNA evidence, particularly in paternity disputes. One of the reported cases on the subject is *Muhammad Arshad v. Sughran Bibi and 2 others (PLD 2008 Lah 302)*. “*In this case, a suit for recovery of maintenance was filed by the mother and her minor son. The petitioner (father) disowned the minor while responding to the claim. For substantiating his contention, an application was filed by the petitioner in a Family Court praying for a DNA test of the child which was dismissed. Thereafter, the petitioner filed a petition in the Lahore High Court to challenge the order of the Family Court dismissing his application. While considering his petition, the Court observed that the determination of a child’s legitimacy entailed far-reaching consequences, and therefore, the determination of such crucial and vital issue should not be done in a cavalier manner. The Court felt that the accusations levelled by the petitioner and his act of disowning the child born in the wedlock needed to be substantiated through tangible proof and credible evidence, which were found to be missing in the petitioner’s case. Following the traditional stance supported by Pakistani law, the Court highlighted that the paternity of a child born in a lawful wedlock invariably carries the presumption of truth and thus the mere denial could never take away the status of legitimacy as ‘child follows the bed. The metaphor of bed in the hadith implies the owner of the marital bed, i.e. the woman’s husband. The Court further observed that if the petitioner was right in his stance, he should have resorted to the process of Liyan [According to this process, the spouses individually swear four times as to the truthfulness of their assertions and then during the fifth time invite curse upon them if any of them has told a lie. Thereafter, the marriage stands dissolved and if the divorced wife gives birth to a child, he/she will not be attributed to the husband] instead of challenging the paternity for the first*

¹⁷ “Qanun-e-Shahadat-Order-1984.”

time in a suit for maintenance. Consequently, the petition was dismissed in limine and the Family Court's order of refusing the request for DNA test was held to be lawful"¹⁸

In **appeal No. 166 of 2019 Najam ul hassan & other v. Mst Romana Qamar & others the High Court of Sindh** states that "*The fact that any person was born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man*"¹⁹

On the other hand, a more nuanced approach has been observed in certain High Court decisions. For instance, in **Arshad Ali v. Mst. Uzma & others "Constitution Petition.No.S-191 of 2024**, the Sindh High Court admitted DNA results as corroborative evidence in a custody dispute where the issue of paternity was not central but still relevant to the child's best interests.²⁰ Similarly, in cases involving **rape or unidentified bodies**, courts have increasingly relied on DNA as primary evidence, suggesting a growing acceptance of scientific methods in certain categories of cases.

These precedents illustrate a bifurcation: while courts are willing to accept DNA evidence in criminal and investigative contexts, they remain bound by Islamic doctrine in matters of paternity and legitimacy arising under family law.

3. Tensions and Contradictions

The legal landscape remains fragmented. On one side is the evolving jurisprudence that recognizes the probative value of scientific evidence, and on the other is the continued adherence to Islamic rules of *nasab*, which require strict procedures and moral presumptions. This has led to contradictory rulings across jurisdictions, with lower courts sometimes admitting DNA results in maintenance or inheritance cases, only to have such findings overturned by higher courts on doctrinal grounds.

The lack of legislative clarity has compounded the problem. Parliament has yet to amend the QSO or the family laws such as the **Muslim Family Laws Ordinance, 1961**—to provide a consistent framework for the use of DNA evidence. Consequently, judges often find themselves balancing constitutional rights (like the right to fair trial and identity) against religiously inspired presumptions that resist genetic disruption of lineage.

This judicial inconsistency not only affects litigants but also undermines public confidence in the legal system. Litigants are increasingly aware of scientific tools, yet their availability remains subject to doctrinal discretion. The result is legal uncertainty, particularly for vulnerable groups such as women contesting maintenance claims or children seeking recognition from absent or denying fathers.

Comparative Jurisprudence from Other Muslim-Majority Countries

While Pakistan has maintained a conservative stance toward the use of DNA evidence in matters of paternity and legitimacy, other Muslim-majority jurisdictions have adopted more flexible approaches. These approaches demonstrate that it is possible to integrate scientific evidence with Islamic legal principles in a way that protects individual rights without undermining religious doctrine. A comparative study of legal developments in countries like **Egypt, Tunisia, and Malaysia** reveals a spectrum of interpretations—ranging from cautious acceptance to progressive incorporation of DNA testing in family law.

¹⁸ "Sohail Abbasi Vs. Mst. Khushboo & Others," n.d.

¹⁹ Irfan Saadat Khan and Yousuf Ali Sayeed, "IN THE HIGH COURT OF SINDH, AT KARACHI," n.d.

²⁰ "Caselaw.Shc.Gov.Pk/Caselaw/View-File/MjUyNDk0Y2Ztcy1kYzgz," accessed June 20, 2025, <https://caselaw.shc.gov.pk/caselaw/view-file/MjUyNDk0Y2Ztcy1kYzgz>.

1. Egypt: Judicial Pragmatism and Limited Reform

Egypt's legal system, though grounded in Islamic law, has exhibited a pragmatic approach in reconciling traditional doctrines with scientific advancements. In the landmark case of *Hindawi v. Hindawi*, the Egyptian Court of Cassation ruled that DNA testing could be ordered in paternity disputes where marital relations were in doubt, though the court stopped short of allowing such evidence to rebut established paternity under *walad lil-firāsh* without additional proof.²¹

Following a series of controversial cases involving abandoned or disputed children, Egyptian courts have gradually expanded the role of DNA evidence, particularly where it serves the child's right to identity, now recognized under both national and international law.²² The **Egyptian Child Law (Law No. 12 of 1996)**, amended in 2008, permits the use of DNA to confirm paternity where no legal presumption of fatherhood exists such as in cases of unacknowledged or extramarital children.²³ However, it still upholds classical restrictions in cases involving children born within wedlock.

2. Tunisia: A Rights-Based Approach

Tunisia represents one of the most progressive models in the Muslim world regarding family law and scientific evidence. The **Tunisian Personal Status Code (1956)**, a secular reform of Sharia-based family law, eliminated polygamy and established the primacy of civil marriage. Within this framework, courts have been more willing to admit DNA testing as conclusive proof of paternity, even in the face of conflicting marital presumptions.²⁴

A landmark Constitutional Court decision in 2016 upheld the use of DNA to establish paternity in a case involving an extramarital child, citing the child's right to identity and equal legal protection.

3. Malaysia: Dual Legal System and Case-by-Case Balancing

Malaysia operates a **dual legal system** where Islamic family law is applied to Muslims through state-based *Shariah* courts, while civil law governs non-Muslims. This bifurcation has allowed for a more nuanced treatment of DNA evidence, depending on the forum and the facts of the case.

DNA evidence could be admitted to disprove paternity, though not without procedural safeguards. *Shariah* courts, however, remain cautious, often requiring the consent of both spouses before ordering DNA tests, and heavily relying on *walad lil-firāsh* unless *li'ān* or clear proof of non-access is shown.²⁵

Importantly, Malaysia has introduced guidelines for admissibility of forensic evidence within the Islamic legal context, facilitating judicial discretion while respecting the religious sensibilities of the Muslim population. The **Department of Islamic Development Malaysia (JAKIM)** has also

²¹ "Egyptjustice.Com/Court-of-Cassation-Cases," accessed June 20, 2025, <https://egyptjustice.com/court-of-cassation-cases>.

²² "(PDF) Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952, Written by Leonard Wood," *ResearchGate*, accessed June 20, 2025, <https://doi.org/10.1163/24685542-12340029>.

²³ "Egypt_children_2008_en," n.d.

²⁴ "States and Women's Rights by Mounira Charrad - Paper," University of California Press, accessed June 20, 2025, <https://www.ucpress.edu/books/states-and-womens-rights/paper>.

²⁵ Sayed Sikandar Shah Haneef, "The Status of an Illegitimate Child in Islamic Law: A Critical Analysis of DNA Paternity Test," *Global Jurist* 16, no. 2 (July 1, 2016): 159–73, <https://doi.org/10.1515/gj-2015-0008>.

issued fatwas permitting the use of DNA in special circumstances, such as child trafficking, rape, and identification of disaster victims.²⁶

Comparative Observations

These jurisdictions reveal a spectrum of possibilities for reconciling Islamic law with scientific evidence. While all recognize the foundational role of *nasab* and *walad lil-firāsh*, they differ in how strictly they enforce these principles in the face of DNA evidence:

- **Egypt** maintains doctrinal respect while allowing DNA testing in edge cases.
- **Tunisia** foregrounds human rights and identity, even when it conflicts with classical doctrine.
- **Malaysia** balances between tradition and scientific utility through legal pluralism and procedural safeguards.

These examples demonstrate that Islamic values and modern scientific methods are not inherently incompatible. Rather, the key lies in a **context-sensitive legal framework** that maintains the sanctity of family while ensuring justice and clarity in contested cases.

Arguments for Reform in Pakistan: DNA Evidence and Paternity Disputes

The current framework in Pakistan, which limits the admissibility and evidentiary value of DNA testing in paternity cases, reflects a strong commitment to Islamic traditions. However, in an increasingly digitized and rights-conscious world, this conservative position has prompted demands for reform. This section outlines the main arguments supporting legal reform in Pakistan, both from judicial and legislative perspectives. It also considers how Pakistan might develop a more balanced legal approach—one that honors Islamic values while recognizing scientific truth and individual rights.

1. Scientific Certainty vs. Legal Presumptions

One of the most pressing arguments for reform stems from the growing gap between **scientific certainty** and **legal presumptions**. DNA testing offers an accuracy rate of over 99.9% in establishing or disproving paternity, far surpassing any traditional mode of evidence, such as oral testimony or circumstantial indicators. The continued preference for *walad lil-firāsh* the presumption that a child born in wedlock belongs to the husband without space for scientific rebuttal creates a disconnect between truth and law.²⁷

While Islamic jurisprudence has historically placed a high premium on legal certainty and social order, modern interpretations by contemporary scholars suggest that *nasab* (lineage) should not be preserved at the cost of factual falsehood, especially in disputes. Failing to acknowledge DNA evidence may result in unjust burdens on women defending themselves in maintenance suits, or on children denied inheritance or identity due to procedural limitations.

2. Child's Right to Identity and Protection under International Law

Pakistan is a signatory to the **UN Convention on the Rights of the Child (CRC)**, which recognizes every child's right to know and be cared for by their parents (Article 7). Denying or obstructing the use of DNA in paternity disputes could amount to a **violation of this international**

²⁶ "(PDF) The Admissibility of DNA Profiling under Islamic Law of Evidence," ResearchGate, accessed June 20, 2025, https://www.researchgate.net/publication/282995090_The_Admissibility_of_DNA_Profiling_under_Islamic_Law_of_Evidence.

²⁷ Hasan Zia, "Legal Assessment of DNA Evidence in Pakistan," *Journal of Development and Social Sciences* 2, no. III (September 30, 2021): 391–400, [https://doi.org/10.47205/jdss.2021\(2-III\)33](https://doi.org/10.47205/jdss.2021(2-III)33).

obligation. Courts in countries like Tunisia have explicitly used this reasoning to justify DNA-based paternity claims, even in the face of Islamic presumptions.²⁸

While some Pakistani courts have mentioned the CRC in custody and adoption matters, the potential of Article 7 to **redefine paternity law** remains untapped. Legal reform could involve amending relevant family laws to permit DNA testing in contested cases where a child's identity and rights are at stake.

3. Precedents in Pakistani Criminal Law

It is noteworthy that Pakistani courts have already **accepted DNA evidence as conclusive** in various criminal contexts particularly in rape trials and murder investigations. This raises a paradox: if DNA can prove guilt or innocence beyond reasonable doubt in capital cases, why should it not be relied upon in civil matters concerning a child's legal status or familial ties?

If Pakistani jurisprudence can overcome religious reservations in criminal law, it arguably has the constitutional and doctrinal flexibility to extend the same courtesy to family law matters.

4. Judicial Discretion and Inconsistency

Another strong case for reform lies in the lack of **uniform judicial practice**. Courts are inconsistent in their treatment of DNA evidence in family matters. In some cases, it is accepted as corroborative; in others, it is outright rejected as irrelevant or inadmissible. This unpredictability undermines legal certainty and may result in injustice, depending solely on the interpretive stance of a particular bench.

A legislative amendment that **clarifies the role and admissibility of DNA** in civil paternity disputes could restore consistency and predictability. It could also authorize judges to order DNA testing in certain categories of disputes, such as maintenance, inheritance, or custody, without violating Islamic norms as long as sufficient safeguards are in place.

5. Islamic Jurisprudential Flexibility

Contrary to a rigid understanding of *fiqh*, classical Islamic jurisprudence offers room for **ijtihad (independent reasoning)** in light of public interest (*maslahah*) and necessity (*darurah*). Scholars such as Yusuf al-Qaradawi and Muhammad Hashim Kamali have argued that Islamic law must respond to scientific advancements and changing social realities, especially when the primary objective of Shariah—**justice ('adl)** is at risk.²⁹

Modern Muslim jurists have recognized that principles like *walad lil-firāsh* are not inflexible in cases involving **denial of access**, rape, or where the truth can only be discovered through science. Reform in Pakistan, therefore, need not entail a break from Islamic law, but a **reinterpretation in light of contemporary evidence** and jurisprudential tools.

Reform in Pakistan's approach to DNA evidence in paternity disputes is both possible and necessary. It would require a multi-pronged strategy, including:

- **Legislative amendments** to the Qanun-e-Shahadat Order and family laws;
- **Judicial guidelines** to standardize the treatment of DNA in family courts;
- **Doctrinal reinterpretation** using Islamic legal principles of ijtihad and maslahah;
- **Awareness of international obligations** to protect the rights of the child.

Such reforms would not only enhance legal clarity but also harmonize Pakistan's domestic law with global norms and technological realities, without departing from its religious foundations

²⁸ "UNTC," accessed June 20, 2025, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

²⁹ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, Reprinted (Oxford: Oneworld Publ, 2010).

Conclusion

The DNA evidence in paternity cases is an interesting crisscross between science, law and religion. In Pakistan, the charismatic obedience to Islamic law especially the presumption of walad lil-firash and the process of evidentiary li'an has led to a lot of opposition to the introduction of DNA evidence as conclusive evidence in disputed paternity cases. Although such opposition can be found based on the aspiration to sustain social order and family sanctity, it has resulted in the rising conflict between the pursuit of truth and formalism in law. As it has been shown in this paper, the Pakistani judiciary has been very slow, and inconsistent in its approach towards DNA evidence. Whereas criminal courts are more and more accepting DNA as supporting or even dispositive evidence, civil courts and family courts are less eager to break with established values. This ambiguity has been the cause of confusion and injustice, particularly among women and children who are facing paternity cases, maintenance and inheritance. This is compounded by the fact that Pakistan has adopted several international human rights instruments such as the Convention on the Rights of the Child that underlines the right of child to know who he or she is in terms of parentage and identity. A comparative examination indicates that the Tunisia, Egypt, and Malaysia are among other Muslim-majority countries, which have implemented more moderate or liberal measures in carrying out DNA evidence in their jurisdiction. These jurisdictions indicate that the Islamic law is not unitary and can develop new approaches to evidence, even at the level of ijihad and maşlahā, without abandoning the base moral and religious premises. In the case of Pakistan, the way ahead is two-fold; judicial reinterpretation and legislative.

The role of judiciary may become useful through review of classical presumptions in accordance with the modern realities and the scientific certitude, within consideration of the overall purposes of maqāşid al-sharī'a especially justice, safety of lineage and the well-being of children. At the same time, the laws should be changed as concerns the Qanun-e-Shahadat Order, the Family Court Act and the relevant laws by making specific provisions as regards to introduction of DNA in paternity and legitimacy proceedings and for determination of the admissibility and weight of evidence. In the end, the reform should not mean rejecting the Islamic tradition, but empowering its living jurisprudential instruments. Proper, principled use of DNA evidence where it is apt can strengthen credibility and fairness, and responsiveness of the Pakistani family law. This kind of a reform would not only fulfill the spirit of the Islamic justice, but would also meet the needs of the modern society.

References

- “Caselaw.Shc.Gov.Pk/Caselaw/View-File/MjUyNDk0Y2Ztcy1kYzgz.” Accessed June 20, 2025. <https://caselaw.shc.gov.pk/caselaw/view-file/MjUyNDk0Y2Ztcy1kYzgz>.
- “DNA Evidence in Pakistani Courts: An Analysis | SAHSOL.” Accessed June 20, 2025. <https://sahsol.lums.edu.pk/node/12815>.
- “Egypt_children_2008_en,” n.d.
- “Egyptjustice.Com/Court-of-Cassation-Cases.” Accessed June 20, 2025. <https://egyptjustice.com/court-of-cassation-cases>.
- Haneef, Sayed Sikandar Shah. “The Status of an Illegitimate Child in Islamic Law: A Critical Analysis of DNA Paternity Test.” *Global Jurist* 16, no. 2 (July 1, 2016): 159–73. <https://doi.org/10.1515/gj-2015-0008>.
- “Josh and Mak International.” Accessed June 20, 2025. <https://joshandmakinternational.com/recent-cases-on-dna-paternity-testing-in-pakistan/>.
- Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Reprinted. Oxford: Oneworld Publ, 2010.

- “Karamonmehdi-Rev,” n.d.
- “Karamonmehdi-Rev (1),” n.d.
- Khan, Irfan Saadat, and Yousuf Ali Sayeed. “IN THE HIGH COURT OF SINDH, AT KARACHI,” n.d.
- Lau, Martin. *The Role of Islam in the Legal System of Pakistan*. BRILL, 2005.
- “Modernizing Muslim Family Law: The Case of Egypt | Oxford University Comparative Law Forum,” July 27, 2017. <https://ouclf.law.ox.ac.uk/modernizing-muslim-family-law-the-case-of-egypt/>.
- “Mohammed Hashim Kamali | ConstitutionNet.” Accessed June 19, 2025. <https://constitutionnet.org/user/jakyxodih>.
- “Outlines of Islamic Jurisprudence | ALSI.” Accessed June 20, 2025. <https://nyazee.org/product/outlines-of-islamic-jurisprudence/>.
- “PATERNITY BETWEEN LAW AND BIOLOGY: THE RECONSTRUCTION OF THE ISLAMIC LAW OF PATERNITY IN THE WAKE OF DNA TESTING - Shabana - 2012 - Zygon® - Wiley Online Library.” Accessed June 20, 2025. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9744.2011.01246.x>.
- “(PDF) Human Rights and Islamic Law - Punishments and Death Penalties.” Accessed June 20, 2025. https://www.academia.edu/12269429/Human_Rights_and_Islamic_Law_Punishments_and_Death_Penalties.
- “(PDF) Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952, Written by Leonard Wood.” *ResearchGate*. Accessed June 20, 2025. <https://doi.org/10.1163/24685542-12340029>.
- “Qanun-e-Shahadat-Order-1984,” n.d.
- ResearchGate. “(PDF) The Admissibility of DNA Profiling under Islamic Law of Evidence.” Accessed June 20, 2025. https://www.researchgate.net/publication/282995090_The_Admissibility_of_DNA_Profiling_under_Islamic_Law_of_Evidence.
- “Sahih Bukhari: Book of ‘Divorce.’” Accessed June 20, 2025. https://www.sahih-bukhari.com/Pages/Bukhari_7_63.php.
- Shabana, Ayman. “Islamic Law of Paternity and DNA Evidence.” *Islamic Law Blog* (blog), June 28, 2021. <https://islamiclaw.blog/2021/06/28/islamic-law-of-paternity-and-dna-evidence/>.
- “Sohail Abbasi Vs. Mst. Khushboo & Others,” n.d.
- “TheImportanceoftheEvidenceofDNAinIslamicJurisprudence,” n.d.
- “Three Decades of DNA Evidence: Judicial Perspective and Future Challenges in India | SpringerLink.” Accessed June 19, 2025. https://link.springer.com/chapter/10.1007/978-981-13-1583-1_11.
- University of California Press. “States and Women’s Rights by Mounira Charrad - Paper.” Accessed June 20, 2025. <https://www.ucpress.edu/books/states-and-womens-rights/paper>.
- “UNTC.” Accessed June 20, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.
- Zia, Hasan. “Legal Assessment of DNA Evidence in Pakistan.” *Journal of Development and Social Sciences* 2, no. III (September 30, 2021): 391–400. [https://doi.org/10.47205/jdss.2021\(2-III\)33](https://doi.org/10.47205/jdss.2021(2-III)33).