



Acknowledgment And Adoption: Evolving Parentage For Muslims In India - An Analytical Study

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Abstract : In order to legitimize children born outside of a legally recognized marriage, this study explores the establishing of paternity for Muslims in India, with a particular emphasis on Iqrar-e-Nasab (acknowledgment of fatherhood) under Muslim Personal Law. The study examines the effects of secular Indian legislation such as the Guardians and Wards Act of 1890 and the Juvenile Justice (Care and Protection of Children) Act of 2015, even though traditional Muslim law has always prohibited adoption since it places a strong focus on biological ancestry. Under the secular framework of the JJ Act, landmark rulings like *Shabnam Hashmi v. Union of India* have expanded the right to adopt to all citizens, including Muslims. This analysis redefines family structures for Muslims in India by highlighting the continued importance of personal laws in conjunction with the changing legal environment that provides a universal right to adopt.

IndexTerms - Paternity, Iqrar-e-nasab, Legitimacy, Muslim Law, Adoption, Juvenile Justice Act, India.

1.INTRODUCTION

According to the Black's Law Dictionary, the word "paternity," which comes from the Latin "paternitas," refers to both biological and legal fatherhood. Maternity can be easily shown by birth the Shariat Act 1939, s 337, but paternity is more difficult to prove, particularly when there isn't a legal marriage. According to Muslim law, the main institution for establishing legal parentage is marriage. A kid whose paternity is unclear can be granted legitimacy and legal rights through the doctrine of "acknowledgement" (Iqrar-e-nasab) in the event that a lawful marriage is not present [AQIL AHMAD, 2021, p. 207]. This paper explores the complexities of Iqrar-e-nasab and how it interacts with Muslim law's long-standing ban on adoption, especially in light of India's changing legal system.

2. LITERATURE REVIEW

With an emphasis on the Indian legal system and the revolutionary effects of contemporary legislation, this study of the literature summarizes academic research and legal writings on paternity (Iqrar-e-nasab), validity, and adoption under Muslim law. The traditional emphasis on a valid marriage for legitimacy is established by foundational texts such as Mulla's Principles of Mahomedan Law and Fyzee's Outlines of Muhammadan Law. These texts also describe the doctrine of Iqrar-e-nasab, which is a mechanism for establishing paternity in the absence of such marriage and frequently reflects patriarchal legal principles. The conditions, ramifications, and restrictions of Iqrar-e-nasab are examined in scholarly works such as Aqil Ahmad's Mohammedan Law and P. Diwan's Muslim Law in Modern India. They also look at the historical ban on adoption that is based on Quranic interpretations and is supported by early Indian case law such as *Mohammad Allahdad Khan v. Muhammad Ismail* (1888). However, with the advent of secular legislation,

the Indian legal system has undergone tremendous change. Limited guardianship options were provided by the Guardians and Wards Act of 1890, but the Juvenile Justice (Care and Protection of Children) Act of 2000 (and later the 2015 Act) has created a secular framework that allows all Indian citizens, including Muslims, to legally adopt, regardless of their personal laws. This is especially true in light of the Supreme Court's historic ruling in *Shabnam Hashmi v. Union of India* (2014). The dynamic interaction between traditional Muslim personal law and changing secular legal norms in India is highlighted by this ruling, as well as analyses of cases like *Habibur Rehman v. Altaf Ali* (1921), *Rashid Ahmed v. Anisa Khatun* (1932), and *Nayan Kumar Trivedi v. Distt. Education officer, Anand* (2004) pertaining to paternity and legitimacy, as well as the application of secular adoption principles. Future studies should examine the possibilities for additional harmonization of Indian family laws as well as the long-term societal and legal ramifications of the rise in Muslim adoptions under the JJ Act.

3. RESEARCH METHODOLOGY

This study applied doctrinal legal methodology, which is based on a methodical analysis of key legal writings. This analysis was based on primary materials, such as the Juvenile Justice (Care and Protection of Children) Act of 2015, the Guardians and Wards Act of 1890, and the Muslim Personal Law (Shariat) Application Act of 1937. To identify the established legal principles and their evolution over time, significant rulings from the Indian Supreme Court and High Courts, including *Habibur Rehman v. Altaf Ali* and *Shabnam Hashmi v. Union of India*, were critically examined. In addition, secondary sources such as academic publications and journal articles were explored to offer the required background information, a range of interpretations, and critical assessments of the legal system that governs adoption, validity, and paternity for Muslims in India.

The primary and secondary legal sources were analyzed in a way that was especially designed to answer the main study objectives. This required knowledge of the traditional principles of Muslim law concerning legitimacy and paternity, the function of the *Iqrar-e-nasab* doctrine, the historical ban on adoption, and the substantial impact of recent Indian laws—particularly the Juvenile Justice Act—on the legalization of adoption for Muslims in India. Clarifying the complex interrelationships between religious personal rules and the general secular legal frameworks in this field was the goal. Although this doctrinal approach provides a comprehensive knowledge based on court precedent and legal texts, it did not entail the gathering of original empirical data. Empirical approaches could be used in future studies to better understand how these legal principles are applied in the actual world and how they affect society.

4. ESTABLISHMENT OF PATERNITY UNDER MUSLIM LAW

Marriage and recognition are the two main ways that paternity can be established under Muslim law. A legitimate marriage is one in which the kid is born within a valid (*sahih*) or irregular (*fasid*) but not void (*batil*) union [MULLA, 2013]. Paternity must be legally recognized by the biological father in cases when the parents are not married or where the kid is born after the mother remarries after becoming pregnant by another man [*Habibur Rehman v. Altaf Ali* (1921)].

4.1 THE CONCEPT OF ACKNOWLEDGEMENT (IQRAR-E-NASAB)

When a legitimate marriage between the parents cannot be established at the time of conception or birth, the doctrine of *Iqrar-e-nasab* is essential in Muslim law, especially in India, for determining the legitimacy, legal status, and rights of the child [AQIL AHMAD, 2021, p. 207]. It is a man's official acknowledgement of a child as his legal child, with important legal ramifications for inheritance and family relationships. The theory is applicable in situations where the acknowledger and the kid's mother may have a legal relationship, when the child's paternity has not been proven, and when the child is not the result of *Zina* (illegal sexual relations) [MULLA, 19th edn, p. 358].

4.2 CONDITIONS FOR VALID ACKNOWLEDGEMENT

The following requirements must be fulfilled for a paternity acknowledgement to be considered legitimate:

- The person who acknowledges must be of legal majority and sound thinking.
- There must be legitimate sonship in the acknowledgement.
- The acknowledged must be at least twelve and a half years older than the acknowledger, according to [id.].
- According to *Muhammad Hanif v. Badarannesa* (1938), *Zina* cannot give birth to the child.
- [*Usmanmiva v. Valli Mahomed* (1916)] The recognized child cannot be the child of another man.

- According to *Habibur Rehman v. Altaf Ali* (1921), the acknowledged kid must accept the recognition.
- In the case of *Asharfod Dowlah v. Hyder Hussain* (1866), the recognition is final once it is made.
- Consistent treatment as a legitimate child can either explicitly or implicitly acknowledge the child [*Masit-un-nissa v. Pathani* (1904)].
- In order to recognize the kid as legitimate, the acknowledger must act with good intentions [Sir D.F. Mulla, 2013].

4.3 LIMITS TO THE DOCTRINE OF ACKNOWLEDGEMENT

If the child's parents were unable to form a legally binding union or if their marriage was discredited, the law of acknowledgement does not apply [P. Diwan, 1991]. It functions under ambiguous circumstances rather than in opposition to accepted facts.

5. PATRIARCHY AND IQRAR-E-NASAB

In many Islamic law jurisdictions, patriarchal practices are intimately associated with iqrar-e-nasab. In keeping with the patriarchal focus on the father's position as the provider and protector, the father's recognition is essential to determining the child's legal and social status. Although marriage in this context immediately bestows legitimacy, recognition offers a mechanism to bring children born out of wedlock or under dubious circumstances into the paternal line, so reaffirming the father's power and duty.

6. IMPLICATIONS OF ACKNOWLEDGEMENT OF PATERNITY

A legitimate paternity declaration has important ramifications for the father and the child:

- For the child: It confers legal status, the right to inherit the father's assets, and the right to receive social security payments.
- For the father: It establishes his parental rights, such as guardianship, custody (although frequently initially with the mother), and the power to decide how best to raise the child.

7. CAN AN ILLEGITIMATE CHILD BE LEGITIMATED?

A child who has been established to be Zina's child through a process of "legitimation" in the Western legal sense is not recognized by traditional Muslim law. A child conceived from an unlawful connection cannot be validated by Iqrar-e-nasab, even though it functions in situations of uncertainty [MULLA, 19th edn, p. 358]. The legitimacy of the marriage at the time of conception and delivery is still emphasized.

8. ADOPTION AND MUSLIM LAW

Adoption in the sense of permanently transferring parental rights and inheritance is generally forbidden under classical Muslim law [Mohammad Allahdad v. Mohammad Ismail (1888)]. According to *Mir Zaman v. Nur Alam*, AIR 1936 Pesh 108, the passages of the Quran are frequently understood as forbidding the attribution of parenthood to someone other than the biological father. As a result, mutubanna, or adopted children, typically have no legal claim to the property of their adoptive parents.

9. ADOPTION IN INDIA: THE IMPACT OF MODERN LEGISLATION

In spite of the conventional approach, India's legal system has changed. Although guardianship is the main focus of the Muslim Personal Law (Shariat) Application Act, 1937, the courts and later laws have opened up adoption channels for Muslims. Although Muslims were permitted to place a kid under guardianship with a court's approval under the Guardians and Wards Act of 1890, this did not grant them the same legal standing as a biological child. The Juvenile Justice (Care and Protection of Children) Act, 2000 (now replaced by the 2015 Act) is a secular law that permits anyone, regardless of religion, to adopt a child in accordance with its provisions and the Central Adoption Resource Authority's (CARA) guidelines, according to the historic ruling in *Shabnam Hashmi v. Union of India* [(2014) 4 SCC 1].

10. CONCLUSION

To sum up, Muslim law provides a distinctive framework for establishing parentage, primarily relying on a valid marriage and the recognition doctrine (Iqrar-e-Nasab) to provide a child legal rights and legitimacy, particularly in cases where it is unclear whether the parents were married at the time of the child's birth. Although the idea of recognition places a strong emphasis on biological heritage, under some circumstances it can also be utilized to establish presumptive legitimacy and inheritance rights. Notably, because it has the

potential to alter proven genealogy, Muslim Personal Law has not traditionally embraced adoption in the same manner as other legal systems. However, with statutes like the Guardians and Wards Act of 1890 and—more importantly—the Juvenile Justice (Care and Protection of Children) Act of 2015, the Indian legal system has made adoption more accessible to Muslims, although in a secular setting. The Supreme Court affirmed the enabling features of the JJ Act in *Shabnam Hashmi v. Union of India*, allowing individuals of different faiths to adopt while respecting their right to follow their own legal system. In modern India, this results in a dual system where Islamic personal law and secular legal needs interact in a dynamic way. While statute law provides a path to adoption, traditional Muslim law places more emphasis on recognition within the confines of potential marriage relationships. Last but not least, in order to become parents and support their children, Muslims in India must deal with separate but occasionally overlapping legal procedures.

11. ANALYSIS

Particularly in contrast to the Indian legal system, Muslim law's perspectives on adoption and paternity provide a sophisticated legal framework. Paternity, derived from the Latin word "paternitas," refers to the biological and legal fatherhood of a child. Even though maternity is typically established at birth, Muslim law establishes paternity based on the doctrine of recognition (*Iqrar-e-Nasab*) and the legality of marriage. The validity and legal status of the child are established by the father's public approval, especially when the parents were not married at the time of conception or birth. It's also critical to keep in mind that Muslim law has not traditionally recognized the validity of a kid born out of an illicit union based only on legal recognition or subsequent marriage. The landmark case of *Habibur Rehman v. Altaf Ali* demonstrates the significance of a valid marriage in conferring legitimacy.

Muslim law establishes paternity mostly through marriage (legal or not, but not null and invalid) or acknowledgement, and sometimes through evidence. The *Iqrar-e-Nasab* theory is essential in cases where the marriage cannot be confirmed explicitly since it allows assumed legitimacy in specific scenarios. The father's obligation to grant his child legal status is emphasized in this view, which is strongly tied to patriarchal institutions. Recognition is fundamentally distinct from adoption as it is understood in other legal systems, despite the fact that it has significant implications for a child's social security, inheritance rights, and legal recognition. Due to the possibility of upsetting established genealogy, traditional Muslim personal law does not recognize adoption as a means of establishing paternity.

However, the Indian legal system is given a new dimension by secular laws like the Guardians and Wards Act of 1890 and the Juvenile Justice (Care and Protection of Children) Act of 2015. These rules allow people, including Muslims, options for adopting children and function outside the traditional framework of Muslim Personal Law. The Supreme Court maintained the enabling element of the JJ Act in *Shabnam Hashmi v. Union of India*, allowing adoption regardless of a person's faith while preserving their freedom to adhere to their own laws. This creates a two-way system in which traditional Muslim law emphasizes recognition inside the framework of marriage, while secular law offers a path to adoption. Muslims in India must therefore navigate a complex web of personal and statutory regulations while deciding on parental rights and child custody.

12. SCOPE OF FUTURE RESEARCH

Future studies in this field might examine the long-term legal and social ramifications of Muslims' growing adoption of the JJ Act. It might also look at how personal laws and secular laws might be better harmonized in family law issues, especially with regard to children's rights. Studies that compare adoption regulations in other nations with a majority of Muslims may also yield insightful information.

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