

Inheritance Status of Illegitimate Children under Muslim Law

Dr. A.S.M. Khalequzzaman*

Abstract

An illegitimate child is a child whose parents were not married to each other at the time of his/her birth and a child born out of `zina`. Illegitimate child is synonymous with bastard, as in a bastard child. The illegitimate child has no right to inheritance from his biological father although the baby itself will be absolutely innocent of the crime of its parents. It goes against the Article 27 of the Constitution which says all citizens are equal. Again, Article 28 of the Constitution prohibits any kind of discrimination based on sex, religion, race, caste or place of birth etc. These innocent children will have a better and assurance of their future life. The Legislature has been uninvolved in this topic, which requires immediate attention and proper legislation to remedy the anomalies in law. These inconsistencies in the law seem to have affected the Hindus, the Muslims, and the Christians most of all. To save the illegitimate child's rights it is needed to amend the Muslim Family laws Ordinance, 1961 including their share of inheritance or implement a specific Act.

Key words: Islam, Muslim, Marriage (nikha), Zin, Sexual Adultery, Illegitimate Child, Assisted Reproductive Technology, Inheritance, DNA.

Introduction:

When a child is born, he or she is supposed to have all rights as a child, these may include the right to inheritance. However, the Islamic law of inheritance has laid down that, it is only a child who is born within a lawful marriage have the right to inherit his or her father. That means, under Islamic law a child who was born out of wedlock has no right to inheritance when his or her natural father is pass away. The consequence of this principle is suffering and hardship to the innocent illegitimate child.

Sources of Inheritance: In Islamic Law have four primary sources; the Holy Qur'an, the Prophetic Tradition (the Sunnah) consensus of juristic opinion (ijma) and reasoning by

* Ph.D, AIU, California, USA., B.A, LL-B, LL-M. Advocate, Appellate Division, Supreme Court of Bangladesh.

analogy (Qiyas) these are the primary sources upon which all the legal rules of Islamic laws are based. However on the aspect of law of succession, the Qur'an is the principal legislation. The prophet did not create any new rule; rather, he made expositions on the laws as revealed in the Holy Qur'an. For instance it is narrated by Ibn `Abbas: The Prophet said, "Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased".⁹

Position of Child before Islam: The period before Islam is usually regarded as the ignorance or better put, the dark ages. This period is characterized by many odious social practices. Generally, women are treated as property. It is not surprising that during this period, female children or women could not lay claim to inheritance because they are seen as object of inheritance (property). The main reason of the deprivation of woman and children of inheritance was the prevention of transfer of wealth from one family to another.¹⁰

Position of Inheritance for Children after Islam: After the introduction of Islam under Islamic Law, for Muslims, a child is legitimate if the parents are legally married to each other when the child was conceived and born. Legitimacy is an important issue for Muslims as it involves the issue of *nasab* (lineage) which is pertinent to legitimacy matters. If a child is legitimate, his *nasab* is of his father and if illegitimate, of his/her mother only. An illegitimate child has no relationship whatsoever with his/her biological father under the Islamic law. *Nasab* is important as it is the root of legitimacy. If a child is legitimate, it is through such status that its other rights arise such as its right to father, right to a good mother, the right to a name, the right to maintenance, inheritance and guardianship.¹⁰

Islamic Law of Inheritance: According to the Shari'ah, an illegitimate child will be attributed only to the mother.¹¹ Therefore, the child will inherit from the mother only. The biological father may make a bequest (maximum of one third of the estate after funeral expenses and debts) in favour of his illegitimate child.¹²

Objects of Research:

The Objectives of this Research are as follows:

The specific Objectives of this Research are as (1) To explore the policy changes and consequent changes of legislation regarding status of illegitimate children's statutory share of inheritance (2) To clarify the status of illegitimate children's statutory position (3) To enlighten the landmark judgments of court regarding of statutory share of inheritance (4) To provide policy recommendation for the statutory share of inheritance of illegitimate children's in the legal system of Bangladesh (5) To recognize the fact whether the illegitimate children's statutory share of inheritance is acceptable or not (6) To clarify the illegitimate children's statutory share of inheritance.

Materials and Methods:

In the light of the objectives of the proposed research work, the following tools and materials, having considering the purview of the situation and circumstances, were used:

Study design: The study was survey and case study type.

Study area: The study was conducted 8 (Eight) divisions of Bangladesh.

Sampling method: Purposive sampling method was used for the study.

Sample size: Total 400 (Four hundred) respondents (Judges, Advocates, Litigant public, illegitimate children and law making agencies) were selected for the study.

Sources of data: Data were collected from primary and secondary sources.

Sources of primary data: Primary data were collected from the respondents of the study area through structured Questionnaire.

Sources of Secondary Data: Secondary data were collected from write up of Laws, Legal tabloids, International Journals and Law reference books, etc.

Method of Data Collection:

Data were collected through face to face interview with respondents.

Data Analysis: Data were computerized, analyzed and interpreted using computer Program Microsoft Excel.

(a) As the secondary sources of information, all published and reported materials, like books, articles, research reports, official printed documents from both home and abroad were used.

(b) My dissertation has been made in the system of empirical and historical, keeping in mind the importance of statistics in legal materials. In collecting in formations, multiple methods were also used. Such as:

(c) Data sheet was prepared and used to collect information from the case reports.

(d) For preparing this research observation and communication techniques were also applied.

(e) Having collected data as required by using the above mentioned sources, the statistical tools and methods were also used to analysis, tabulating and comparative discussion of the data.

Methodology:**Specific Question**

- Can the existing Muslim law insures the right of inheritance of the illegitimate children ?
- Is there any necessary to change the legislation regarding right of inheritance of the illegitimate children as per their necessity ?
- Do common people know about the law in respect of right of inheritance of the illegitimate children ?
- Do people have faith that the amended laws will be implemented properly and impartially ?

Discussions:

Muslims believe in the Divine origin of their Holy Book The Koran which according to their belief was revealed to the Prophet by Gabriel. The Koran i.e. one showing truth from falsehood and right from wrong. The Koran contains about 6000 verses but not more than 200 verses deal with legal principles and if we leave out of account those which concern the State as such, there are about of 80 verses, more or less, which deal with the law of personal status.

The estate of a deceased Mahomedan is to be applied successively in payment of (1) his funeral expenses and death-bed charges; (2) expenses of obtaining probate, letters of administration, or succession certificate; (3) wages due for service rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant; (4) other debts of the deceased according to their respective priorities (if any); and (5) legacies not exceeding one-third of what remains after all the above payments have been made. The residue is to be distributed among the heirs of the deceased according to the law of the sect to which he belonged at the time of his death .¹³

The rules of equity and equitable considerations commonly recognized in Courts of Equity in England are not foreign to the Mussulman system, but are in fact often referred to and invoked in the adjudication of cases under that system.¹⁴

Legitimacy is an important issue for getting share of inheritance under Muslim Law. Presumption of marriage means “Marriage will be presumed, in the absence of direct proof, from:

(a) prolonged and continual cohabitation as husband and wife¹⁵ (b) the fact of the acknowledgment by the man of the paternity of the child born to the woman, provided all the conditions of a valid acknowledgement.¹⁶ © the fact of the acknowledgement by the man of the woman as his wife¹⁷

LEGITIMACY PRESUMED: The legitimacy of a child may be presumed from circumstances from which a marriage itself between its parents may be presumed.

Presumption of legitimacy under the Mahomedan Law-The rules of Mahomedan Law may now be stated.⁹ They are as follows:-

1. A child born within less than 6 months after marriage is illegitimate.
2. A child born after 6 month from the date of marriage is presumed to be legitimate, unless putative father disclaims the child by li'an.

If a person is not the legitimate son, acknowledgement cannot confer status of legitimacy,- Acknowledgement however raises a presumption of legitimacy, the onus of rebuttal of which is on the person who disputes the legitimacy.¹⁸ Further, once a marriage is shown to exist the child's legitimacy may be established by proof of its treatment as the legitimate offspring of its father. On the other hand, where no marriage is shown to exist, the mere admission of paternity is not enough for the purpose of affording proof of legitimacy; the treatment must be such as to convey the fact that the child is acknowledged not merely as the offspring of the father but as his legitimate offspring.¹⁹

PATERNITY MATERNITY: Parentage is the relation of parents to their children. Paternity is the legal relation between father and child. Maternity is the legal relation between mother and child. These legal relations give rise to certain rights and liabilities as regards inheritance, guardianship, and maintenance.⁹

MATERNITY HOW ESTABLISHED: The maternity of a child is established in the woman who gives birth to the child, irrespective of the lawfulness of her connection with the begetter.⁹

PATERNITY HOW ESTABLISHED: The paternity of a child can only be established by marriage between its parents. The marriage may be valid (sahih), or irregular (fasid), but it must not be void (batil). Marriage may be established by direct proof. If there be no direct proof, that is, by presumption drawn from certain facts. It may be presumed from prolonged cohabitation combined with other circumstances or from an acknowledgement of legitimacy in favor of a child.⁹ When the paternity of a child is established, its legitimacy is also established.⁹

LEGITIMACY WHEN CONCLUSIVELY PRESUMED: The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.⁹

ACKNOWLEDGEMENT IS OF LEGITIMATE CHILD: If an acknowledgement is of legitimate sonship, and that relationship is possible in fact and in law, it raises a presumption of marriage between the acknowledger and the mother of the person acknowledged, and, unless rebutted, gives such person the right of inheritance to the acknowledger as his legitimate child (k), and a similar right to the mother as lawful wife of the acknowledger.²⁰ Clear and reliable evidence that a Mahomedan has acknowledged children as his legitimate issue raises a presumption of a valid marriage between him and the children's mother.¹⁶

If a person is not the legitimate son, acknowledgement can not confer status of legitimacy. Acknowledgement however raises a presumption of legitimacy, the onus of rebuttal of which is on the person who disputes the legitimacy.²¹ The continual co-habitation of the alleged parents and acknowledgement of the child by the father is presumption evidence of marriage between the parents and of the legitimacy of the offspring, so far as legitimacy of a child is concerned it may be presumed or inferred from circumstances without any direct proof either of the marriage or any formal act of legitimation.²²

Man's prolonged and continued co-habitation with a woman who was a prostitute coupled with his acknowledgement as his wife, not sufficient to give her the status of wife in the absence of direct proof of Nikah.²³

Privy Council in *Sadiq Hussain v. Hashim Al* said that 'No statement made by one man that another (proved to be illegitimate) as his son can make the other legitimate, but where no proof of that kind has been given, such a statement or acknowledgement is substantive

evidence that the person so acknowledged is the legitimate son of the person who makes the statement, provided his legitimacy is possible.’²⁴

Again in *Habibur Rehman Chowdhury v. Altaf Ali Chowdhury*, ‘the Court has said that there is no process recognized under Muslim law by which a status of legitimacy may be conferred on an illegitimate child. But, it seems that one of the reasons for permitting polygamy and temporary forms of marriages under Muslim law is that under no circumstances the child born to them shall be illegitimate.’²⁵

According to the Muslim Family Laws Ordinance, 1961: According to the Muslim Family Laws Ordinance, 1961 published in the Gazette on 2nd March 1961 included the Registration of Marriages in Section 5(1). According to the said section “Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance”. The said section was omitted by the Section 15 of the Muslim Marriage And Divorce (Registration) Act, 1974 and according to the Section 3 of the Muslim Marriage and Divorce (Registration) Act 1974 included that Registration of Marriage- “Notwithstanding anything contained in any law, custom or usage, every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Act.” Now Registration of Marriage is compulsory and presumption no need.

The marriage took place after the Muslim Family Laws Ordinance came into force but it was not registered as required by the said ordinance and this non-registration clearly shows that there was no valid solemnization and causes a doubt on the solemnization of the marriage itself. Co-habitation for a period of about one year does not establish a valid marriage.²⁶

Slave woman: " It was reported that, the Prophet (pbuh) have said that “If a man commits fornication with a free woman or a slave woman, the child is the product of fornication, he neither inherits nor may anyone inherit from him” [Thirmidi] this Prophetic tradition has laid down the principle that an Illegitimate child doesn’t inherit from the father and the father does not inherit from the illegitimate child. Therefore for a child to establish inheritance right he or she must connected with the father by birth in a lawfully marriage; this suggests that those child who were not born in lawfully marriage they have no right to inheritance from their biological father, however they can do so to their mother.²⁷

Child conceived of zina: Although the baby itself will be absolutely innocent of the crime of its parents, if it was conceived out of marriage, it will be considered a child born out of `zina` in the Sight of Shariah Law and a few restrictions will apply in the sight of Shariah Law. The baby will be called and recognized by the name of its mother. The baby will legally inherit only its mother; and the mother will inherit from its baby. The baby will not be a legal heir of its biological father and thus it will neither inherit its biological father, nor will its father inherit from the baby. Neither the baby nor its biological father would have any rights due from each other; basically the child would have no legal obligation towards its biological father, nor would the biological father have any legal obligations towards its illegitimate child.

The plight of illegitimate children has always been pitiful. They get punishment for no fault of their own. The main question that arises here is – What is the fault of the child? In Hindu law, the illegitimate child belongs to the mother. But under Muslim law, the child does not

even belong to the mother and is considered as the child of nobody. In Muslim law, the illegitimate child has no right to inherit property from the father in the classical law, as well as in some of the modern Islamic jurisdictions. The mother of an illegitimate child may find herself subject to harsh punishments for having *Zina*. Thus, the crucial status of legitimacy in Islamic law has a huge impact on the lives of children and their parents, especially mothers. Thus, it is difficult for an illegitimate child to claim property from his or her parent/s.²⁸

The Illegitimate Child (Walad al-Zina)

The four Sunni schools concur that an illegitimate child is similar to a child disowned by the father, in all that which has been mentioned concerning the absence of mutual inheritance between the child and the father and the presence of such inheritance between the child and its mother.²⁹ The Imamiyyah say: There is no mutual inheritance between an illegitimate child and its fornicator mother, in the same manner as there is no such inheritance between the child and its fornicator father, because there is a common impeding cause between the two, i.e. fornication.

IF THE BIOLOGICAL FATHER MARRIES THE CHILD'S MOTHER BEFORE HE/SHE IS BORN: Moreover, the jurists mention that if one was to marry a woman whom one had impregnated and the child was to be born six months or more after marriage, then the child will be considered legitimate. However, if the child was born prior to six months elapsing, he/she will not be considered legitimate.²⁹ If a child is conceived before marriage or out of wedlock, absolutely regardless of whether or not the biological father later marries the woman he committed the abomination of zina with.....as long as the child was conceived out of marriage, it will be considered a child born out of zina in the Sight of Shariah Law and in the Sight of Allah Subhanah; and all the conditions and restrictions which apply to any child born out of wedlock will apply to this child.

*The baby will be called and recognized by the name of its mother.

*The baby will legally inherit only its mother; and the mother will inherit from its baby.

*The baby will not be a legal heir of its biological father and thus it will neither inherit its biological father, nor will its father inherit from the baby.

*Neither the baby nor its biological father would have any rights due from each other; basically the child would have no legal obligation towards its biological father, nor would the biological father have any legal obligations towards its illegitimate child.³⁰

Right to property of illegitimate child in Shiah Law: An illegitimate child does not inherit at all, not even from his mother or her relations, nor do they inherit from him.³¹

Right to property of illegitimate child in Hanafi Law: An illegitimate child is considered to be the child of its mother only, and as such it inherits from such child.³² But it has been held that an illegitimate son cannot inherit from the legitimate son of the same mother³³

Position of Child born as a result of Assisted Reproductive Technology: ART (Assisted Reproductive Technology) has opened the way for several other practices including gender selection, pre-implantation genetic diagnosis, genetic manipulation, cryopreservation of gametes, embryo, cloning...etc. This is definitely against the primary source of Islamic laws

which states that the parents of the child must be the biological parents. Therefore, children born out of surrogacy or through the involvement of any other third party, other than the biological parents (unmarried couples) shall not be recognized and child born out of such technology shall be regarded as illegitimate.

It is for these reasons that a child rights, born as a result of Assisted Reproductive Technology (ART) is currently under heavy debates among the Muslim countries. However, it must be noted that Islam does not totally discourage ART. It is to be practiced upon taking in consideration of the above discussed hadith. ART is widely accepted only after prestigious scientific and religious bodies and organizations issued guidelines which were adopted by Medical Councils or concerned authorities in different Muslim countries and controlled the practices in ART centers.

Currently there are no laws governing the right of a child born out of such technology, however, it has provoked ethical debate among the Muslims and non-Muslims. Malaysia should consider The Status of Children (Assisted Reproduction Technology) Act 2013, a Singapore legislation relating to the legal status of children conceived and born through Assisted Reproduction Technology and for matters connected therewith.

Today, the basic guidelines for ART in the Muslim World are: ART should be indicated only in a married couple as a necessary line of treatment and it is permitted only during validity of marriage contract with no mixing of genes. If the marriage contract has come to an end because of divorce or death of the husband, then ART should not be performed on the female partner even if the sperm belonged to her husband. If a child is conceived out of this guideline, then eventually the child inherits an illegitimate status.³⁴

Result:

The child born out of wedlock, like every other child, he or she is born sinless; it does not carry the stigma of the sin of the father or mother or both. A basic principle in Islamic justice is that no one bears the blame for another's fault. A child born as a result of an illegitimate relationship suffers no adverse discrimination on account of his parents' sin. Biological Father and Mother are getting inheritance from their own parents but their illegitimate child is not getting inheritance from their Biological parents. Parents have committed fault in spite of that they are getting inheritance.

After birth the Illegitimate child were thrown into the drain, Jungle, on the street, in the Hospital without care. Almost they are nourishing in the street.

On the other hand some children those who are brought up in the nest of the crow and the people of the society are not getting proper information and those illegitimate children are getting inheritance. Illegitimate children are not curtailing from the Muslim but they are not getting inheritance which is injustice and discrimination. So for the illegitimate child statutory inheritance is necessary.

According to the Mahamadan Law inheritance of illegitimate child has no share in the Table of Sharers, Table of Residuary and Distant Kindred even anywhere in the Muslim personal law.

According to the Bangladesh Penal Code under section 497 in the Adultery woman is not guilty but Male is guilty and should be punished. According to the Sura Nesa Ayet 15 it is mentioned punishment for the Adultery woman. It is also discrimination. I think both should be punished.

According to the Sura Nesa there is no mention illegitimate child because of in Islam there is no chance of adultery but in the society there are so many illegitimate child are existing. Though they have no fault but depriving from their inheritance. In this matter a proper solution is necessary. All activities of the illegitimate child are governed by the statutory law but statutory law and personal law are silent for giving their share of inheritance.

According to the Hanafi school mother will took responsibility of the illegitimate child but mother can not be able to birth the child alone there must be a biological father. But in the Muslim Law male is not responsible for the illegitimate child which is discrimination. Now a days DNA test is the secured test for identification of the biological father of the illegitimate child. At first mother will identify the biological father. If father denied his illegal intercourse then DNA test is the best procedure for identifying the actual biological father and thereafter the biological father will be also responsible and the child will be entitled to get inheritance from both his father and mother. To implement the same we can amend the Muslim Family Laws Ordinance ,1961 published in the Gazette on 2nd March 1961 including the share of inheritance of illegitimate child.

Presumption no need DNA test is final: If an alleged biological father who refused to take responsibility of his illegitimate child then DNA test is necessary and if proved that the child is of the alleged biological father then presumption no need. Here father is identified and biological father to resume responsibility towards the child as if the child was born in wedlock. This child will have all rights including to be an heir.

League of Nations Publications: The question of illegitimate children was first raised in the former Child Welfare Committee during its 1927 session by the Women's Committee of the International Federation of Trade Unions, Amsterdam, which submitted a memorandum concerning the rehabilitation of unmarried mothers and the protection of illegitimate children.

The following questionnaire was drawn up by the Committee and sent to all States:

1. What are the rights and obligations of the mother and of the father towards the illegitimate child?
2. Is action to establish the paternity of the child allowed (affiliation proceedings)? If so, how is this action undertaken?
3. What conditions govern the legitimation of illegitimate children ?
4. What rights do illegitimate children possess to claim maintenance from their parents?
5. What are the rights of inheritance or succession of illegitimate children?
6. Is there a system of official guardianship for illegitimate children?

If so, how is this guardianship organised?

7. Are there any other means, and, if so, of what nature, provided either by the laws or by institutions for ensuring the moral and material protection of illegitimate children?

Their observation in respect of different religions: Mohammedanism appears to view children differently, and recognises a very wide range of presumptions entitling the father³⁸ *Hindu Law*, West and Majid, page 604, § 3A. to acknowledge a child as his own. The category of legitimate children or of children capable of legitimation (there may be four wives and also slave concubines) is therefore very wide. As illegitimate intercourse is severely punished, provision is made for the establishment of paternity and for maintenance obligations towards the child, partly by way of penalty. In this respect, therefore, Mohammedan law occupies a more or less intermediate position between Buddhism, Confucianism (with their large families) and ancient Roman law (with its legal family), on the one hand, and the rigidly restricted family of Germanic and Jewish law and the Christian Church on the other. A characteristic of the ancient polytheistic laws of the West would appear to be the full legal recognition of the position of all mothers in regard to their children. Proceedings to establish paternity were unknown to *Roman law*. The rights and obligations attaching to the *patria potestas* belonged to the father of the legal family, and as the aim was to secure its continuity, the problem of children born out of wedlock did not arise.

Committee suggested to Rehabilitate the illegitimate child in society and to repair the wrongs:

- A. By acknowledgment;
- B. By an authoritative act of the State;
- C. By the subsequent marriage of the father and mother.

Legal Effects.—The laws of all countries appear to agree in granting to a child legitimated by the subsequent marriage of his father and mother the same rights as to a legitimate child.

Social Effects: The economic effects of legitimation appear to depend to a great extent on its legal effects. The social effects properly so called apparently differ considerably according to the form and circumstances of legitimation. It seems to be difficult, especially in the case of legitimation outside marriage, to provide the child with the status of legitimacy in society corresponding to the legal status which he acquires; but there would appear to be no doubt that the marriage of the father and mother may efface all trace of the illegitimate birth of the child in social life.

Under the laws of certain countries, where there are legitimate children, the illegitimate child may not claim any right to the succession (in Chile, Salvador and, as regards the father's succession, Venezuela).

Under the laws of other countries, the illegitimate child inherits along with the legitimate children, but only receives a certain proportion of their share (for instance, one-fifth in Peru;

one-fourth in the Argentine ; one-third in Belgium, Luxemburg, the Netherlands and Poland; half in Brazil, Bulgaria, France, Italy, Japan, Monaco, Spain and Switzerland).³⁵

Conclusion :

At present in the democratic society which we pursued, equality under law is a significant basis. Discrimination against illegitimate children is meaningless and it is unconstitutional. It is the right of every child to get love and affection from both the mother and the father. He or she has the right to be brought up in a cool, loving and accepting environment. But justice seems to have pervaded the illegitimate children in our country under Muslim Law and for no mistake of their own. A person cannot be given punishment for a crime he/she has not even committed. The Legislature has been uninvolved in this topic, which requires immediate attention and proper legislation to remedy the anomalies in law. It will not be wrong to say that it is truly ironical that the reforms introduced by legislation have rather created aberrations and confusion rather than improving the status of illegitimate children. These inconsistencies in the law seem to have affected the Hindus, the Muslims, and the Christians most of all. Extra-marital (illegitimate) children cannot be prevented by differentiating the share of inheritance between legitimate and illegitimate child if father is identified.

Recommendations:

Awareness of sexual and reproductive health and rights must be cultivated among the younger generations (who are sexually active) and the lower income group.

Empowerment of women through awareness and effective laws is the most necessary tool overcome this illegitimacy issue. Children, be it legitimate or illegitimate, must be treated equally as it is not their fault to be born as such. Children are born with rights according to the UNCRC and no one has the right to rip that from them.³⁶

In our country on the basis of certain recommendations of the commission on marriage and family laws, The Muslim Family Laws Ordinance was promulgated on 2nd March, 1961. In that Ordinance has broken the rules of Mohamedan Law such as succession and administration, polygamy, talak, dissolution of marriage, maintenance, dower, child marriage restraint Act and those rules are accepted and complying by the Muslims eagerly. I think, if we include the share of inheritance of the property for the illegitimate child from the propositus it also be accepted by the Muslims and the illegitimate children who have no personal fault but they are deprived by our personal law will be acquired their inheritance right.

References:

- ¹ Narantakat V. Prakkal (1922) 45 Mad. 986, 71 I.C. 65, (23) A.M. 171.² Abraham V. Abraham (1863) 9 Moo. I.A. 199, 243.³ Hedaya, 25; Baillie; 4. ⁴ [(Khurshid Bibi v. Baboo Muhammad Amin. (1967) 19 DLR (SC) 59. Abdul Kadir v. Salima (1886) 8 All. 149.⁵ 1 BLC 404 ⁶ Iftikhar Nazir Ahmad Khan v. Ghuam Kibria, (1968) 20 DLR (W.P) 176.⁷ Legal Dictionary.⁸ Wikipedia ⁹ Mahomedan law D.F. Mulla.¹⁰ Journal of Law, Policy and Globalization www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.45, 2016 55. ¹¹ (Shaami vol.23 pg.489; HM Saeed).¹² Al Mahmood 13 Q & A from the Darul Ifta Mufti Ebrahim Desai. , *International Journal of Applied Psychology*, Vol. 5 No. 4, 2015, pp. 109-114. ¹³ Hayat-un-Nissa v. Muhammad (1890) 12 All. 290, 17 I.A. 73.¹⁴ (1915) 43 I. A. 294, 301-302, 38 All. 581,582, 36 I.C. 87, SeeHedayas, Book XX, p. 334, "Of the Duties of the Kazeer.
- ¹⁵ Khajah Hidayat v. Rai Jan (1884) 3 M.I.A. 295,317-318, 6 BCR 398 AD.
- ¹⁶ Immabandi v. Mutsadi (1918) 45 I.A.73, 81-82,¹⁷ Mt. Bashiram v. Mohammad Husain (1941) 16 Luck. 615. " They are as follows:-
- ¹⁸ [Amir Sultan Vs. Md. K. Alam (1977) 29 DLR (SC) 296] ¹⁹ Fatima Binti Hafidh Vs. Administrator General Zanibar Prolectorate, (1950) 2 DLR (PC) 1.²⁰ Khajooroonissa v. Rowshan Jehan (1876) 2 Cal. 184, 199, ²¹ [29 DLR (sc) 296].²² [PLD 1958 (WP) Karachi 420.²³ 20 DLR (WP- 176).²⁴ (1916) ILR 38 All 627.²⁵ (1921) 23 BOMLR 636.²⁶ (21 DLR 213).²⁷ [Reported by Imams Ahmad , Abu Dawood , Ibn Majah and al-Darimi].Fatwa No : 84788 Fatwa Date : Jumaadaa Al-Aakhir 28, 1423 / 7-9-2002.²⁸ By Sylvine - July 12, 2016 ²⁹ (*al-Mughni*, vol. 6, *bab al-fara'id*)³⁰
- ³¹ (1869) 12 W.R. 512, S.C. on review (1870) 14 W.R. 125. ³² Tagore Law Lectures, 1873, p. 123.³³ Rehmat Ullah v. Maqsood Ahmed ('52) A.A. 640).³⁴ The Status of Children (Assisted Reproduction Technology) Act 2013.³⁵ Series of League of Nations Publications IV. SOCIAL QUESTIONS 1939. IV. Geneva, May 15th, 1939. Council *Official No.* : C. 70. M. 24. 1939. IV. 6.³⁶-Shabnam Ishaque , *Islamic Principles on Adoption* 2008 IJLPF, 22(3), 393-420 p. 405

Appendix

Operational definition:

Islam: The word "Islam" means "peace" and "submission". In its religious sense it denotes "submission to the Will of God" and in its secular sense, the establishment of peace. The word "Muslim" in Arabic is the active participle of Aslama, which is acceptance of the faith, and of which the noun of action is Islam.

Muslim: The person who believes in the Divine origin of their Holy Book The Koran i.e. Al-furqun. Any person who professes the Mahomedan religion, that is, acknowledges (1) that there is but one God, and (2) that Mahomed is His Prophet, is a Mahomedan. ¹ Such a person may be a Mahomedan by birth or he may be a Mahomedan by conversion. ² The Mahomedans are divided into two sects, namely, the Sunnis and Shias.

Definition of marriage. Marriage (nikha) defined to be a contract which has for its object the procreation and the legalizing of children. ³

Marriage among Muslims is not a sacrament but in the nature of civil contract, such a contract undoubtedly has spiritual and moral overtones and undertones but legally, in essence, it remains a

contract between the parties which can be the subject of dissolution for good cause. In this respect, Islam the dinal fittrat confirms to the dictates of human nature and does not prescribe the binding together of a man and a woman to what has been described as “holy wed lock” .⁴

Marriage is an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity. It is instituted by the divine command among members of human species. It does not give the man any right over the person of the wife expect for mutual relationship according to the law of nature and not contrary to it.”⁵

Zina. – Zina means fornication of adultery. Sexual intercourse not permitted by the Mahomedan law is zina. The offspring of such intercourse is illegitimate, and cannot be legitimated by acknowledgment.

Sexual intercourse by a man with a woman without any actual or supposed right in her, either by marriage or bondage, amounts to fornication (zina), which is looked down as one of the greatest sin against society under the Muslim Law.⁶

Adultery: According to the Penal Code section 497- Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Illegitimate Child: An illegitimate child is a child whose parents were not married to each other at the time of his/her birth and a child born out of `zina`. Illegitimate child is synonymous with bastard, as in a bastard child. ⁷

Assisted Reproductive Technology: ART (Assisted Reproductive Technology) is not mentioned in the primary sources of Sharia. Patients and Muslims doctors alike thought by seeking ART for infertility treatment, they are challenging God’s will. ART has made it possible for the involvement of third party in the process of reproduction whether by providing an egg, a sperm, an embryo or uterus. ⁸

Inheritance: Meaning of Inheritance Literally inheritance means something which has endless or continuous; also it means transfer of property from one person to another whether intangible or tangible in nature. Technically it means a science that shows those people who are entitled to inheritance and how much each of them will get from the property of the deceased according to Islamic law.⁹

DNA: Deoxyribonucleic acid is a thread-like chain of nucleotides carrying the genetic instruction used in the growth, development, functioning and reproduction of all known living organisms and many viruses. ⁸