PATERNITY OF CHILDREN BORN BEFORE SIX MONTHS OF MARRIAGE: ISLAMIC JURISPRUDENTIAL PERSPECTIVE

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ABSTRACT

This study examines the Islamic jurisprudential framework for establishing paternity (*nasab*) in cases of children born less than six lunar months after marriage which triggers a presumption of illegitimacy across the four (4) Sunni schools of law (Mālikī, Shāfiʿī, Ḥanafī and Ḥanbalī). Drawing on Qurʾān exegesis, prophetic tradition and classical fiqh sources, it elucidates the doctrinal consensus on the minimum gestation period, inter-madhhab variations in evidentiary requirements and exceptions as well as the historical development of these rulings. A comparative analysis highlights methodological pluralism, while contemporary dimension's address tensions arising from biomedical advancements particularly premature viability and Deoxyribonucleic Acid (DNA) testing and statutory reforms in Muslim majority jurisdictions. The discussion reflects on the balance between lineage preservation (*ḥifẓ al-nasl*) and equitable outcomes, noting gender implications and socio-psychological effects. Content analysis research techniques has been used in this study. The objective of this study is to analyze paternity cases of early births child in the Islamic context, to find the role of DNA test in the Islamic jurisprudence and to assess effects of DNA testing on marriages, paternity and children in the Islamic world. Therefore, the study concludes that Islamic paternity law exemplifies adaptive *ijtihād* (independent juridical reasoning), recommending cautious integration of scientific evidence and child-centered reforms aligned with *maqāṣid al-Sharīʿah* in modern contexts. The major recommendation of this study, Muslim societies are encouraged to use contextual *ijtihād* in paternity disputes by allowing scientific evidence such as DNA testing as one of corroborative indicators.

Keywords: Islamic jurisprudence, paternity, Marriage, Children, illegitimacy, DNA testing.

1. Introduction

In Islamic law, the establishment of paternity (*nasab*) is fundamentally linked to the institution of marriage, serving as a cornerstone for preserving lineage, inheritance rights and familial stability. The Glorious Qurʾān and Sunnah of the noble Prophet emphasize the protection of *nasab*, with classical jurists deriving the minimum gestation period of six lunar months from verses referencing a combined gestation and weaning duration of thirty months alongside a recommended two-year nursing period there are number of Qur'anic verses that makes adequate provision for that. Such as (Qurʾān 46:15; 2:233; 31:14). A child born six or more lunar months after a valid marriage contract is presumptively legitimate and attributed to the husband, regardless of consummation in some views, while births before this threshold raise presumptions of pre-marital conception, often rendering the child illegitimate unless rebutted through acknowledgment or exceptional evidence. There is broad consensus (*ijmāʿ*) among the four major Sunni schools on this six month minimum, though variations persist: the school attributes the child to the husband even at exactly six months from the contract without requiring proof of intercourse (*al-Sarakhsī, n.d.*), whereas the Mālikī, Shāfiʿī and Ḥanbalī schools typically demand evidence of possible consummation within that period (Ibn Rushd, n.d.). This topic remains highly relevant in contemporary Muslim societies, where medical advances such as premature viability and Deoxyribonucleic Acid (DNA) testing intersect with traditional rulings; DNA is generally viewed as supportive circumstantial evidence rather than overriding *sharʿī* presumptions, to avoid stigmatizing lawful marital unions,[1] though some scholars advocate its integration in disputed cases[2]. This paper analyzes the doctrinal foundations, inter-madhhab variations and modern challenges surrounding paternity attribution for children born less than six months after marriage, seeking to illuminate the balance between textual fidelity and contextual *ijtihād*. The study is guided by the following questions: What scriptural and scholarly bases underpin the six-month threshold? How do the *madhāhib* address exceptions and rebuttals? And what implications arise from scientific progress for family law in Muslim contexts? The analysis draws on primary sources (Qurʾān, ḥadīth, classical *fiqh* texts) and secondary scholarship through comparative doctrinal research, accessing Arabic

[1] Islamic Fiqh Council of the Muslim World League. Resolution on the use of DNA fingerprinting in proving or disproving lineage (16th session). *Majallat al-Majmaʿ al-Fiqhī al-Islāmī*, *13*(15), (478–481), 2002.

[2] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences. *The Muslim World*, *112*(4), (468–489). 2022. DOI: https://doi.org/10.1111/muwo.12442 and D. Serrano-Ruano, Redefining paternal filiation through DNA testing: Law and the children of unmarried mothers in the Maghreb. *Journal of Middle East Women's Studies*, *14*(3), (292–313), 2018. DOI: https://doi.org/10.1215/15525864-7025400

originals via digital archives (e.g., *Al-Maktaba al-Shāmila*, JSTOR, Hein Online) and verified translations.

2. The Legal Basis of Paternity

The discourse on paternity attribution (*nasab*) in Islamic law, particularly concerning children born before the six-month gestation threshold after marriage, is deeply rooted in scriptural sources and has evolved through centuries of scholarly interpretation. Central to this is the Qurʾān's guidance on gestation and weaning periods, from which jurists deduce the minimum pregnancy duration. Qurʾān 46:15

> *"And We have enjoined upon man [care] for his parents. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months, until, when he reaches maturity and reaches [the age of] forty years, he says, 'My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims*"[3]

In another verse Allah says *"Mothers may nurse [breastfeed] their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is their [i.e., the mothers'] provision and their clothing according to what is acceptable..."*,[4]

In also another provision of the Glorious Quran *"And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is the [final] destination"*[5]. These verses collectively imply a minimum gestation of six lunar months (approximately 180 days) when the recommended two-year weaning period is subtracted from the thirty-month total. Early jurists viewed this threshold as a safeguard against attributing children from pre-marital relations (*zina*) to the marital bed (*firāsh*), thereby protecting lineage

[3] Q 46:15
[4] Q 2:233
[5] Q 31:14

integrity a core objective (*maqṣad*) of Sharīʿah.

Classical fiqh texts across the four Sunni schools (madhāhib) exhibit remarkable consensus on this minimum period, albeit with subtle variations in application. The Ḥanafī jurist al-Sarakhsī (d. ca. 1090), in his comprehensive *Al-Mabsūṭ*, holds that the count begins from the marriage contract (ʿaqd), allowing attribution even if the child is born exactly at six months without proof of consummation, as the presumption of legitimacy favors the child's rights (al-Sarakhsī, n.d.). By contrast, Ibn Rushd (d. 1198), in *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, outlines the majority view (Mālikī, Shāfiʿī, and Ḥanbalī) requiring potential access for intercourse (istiṭāʿat al-waṭʾ) within the timeframe, reflecting greater caution against erroneous attributions (Ibn Rushd, n.d.). Ibn Qayyim al-Jawziyya (d. 1350), a prominent Ḥanbalī scholar, in *Tuḥfat al-Mawdūd bi-Aḥkām al-Mawlūd*, incorporates biological observations, arguing that fetal viability before six months is implausible, thus grounding the threshold in both scripture and empirical reality.[6]

Medieval scholarship also addressed maximum gestation periods, influencing paternity disputes in cases of prolonged absences. While the six-month minimum enjoys consensus (ijmāʿ), maxima vary: Ḥanafīs limit it to two years, Shāfiʿīs and Ḥanbalīs to four, and some Mālikīs to five or seven, often drawing on anecdotal ḥadīth reports such as traditions in Ṣaḥīḥ al-Bukhārī alluding to exceptional prolonged pregnancies (*e.g., related narrations where ʿĀʾishah reportedly stated that a woman does not carry a child for more than two years, but rare extensions were accepted to resolve doubt*), to accommodate uncertainties. This flexibility aimed to protect women's honour and children's rights but introduced complexities in legal proceedings. For comparative breadth, Imāmī (Shia) scholars generally align with the six-month minimum but emphasize traditions from the Imams in validating exceptions, often requiring stronger evidence (bayyina) to rebut illegitimacy presumptions. Jaʿfarī fiqh places greater weight on the husband's acknowledgment (iqrār) or liʿān in disputes (al-Ḥillī, n.d.).

In the modern era, traditional fiqh intersects with scientific advancements, prompting reevaluations. According to Eich the historical six-month minimum aligned with observed biology, yet contemporary knowledge of viability from 22–24 weeks challenges it.[7] While

[6] Ibn Qayyim al-Jawziyya. *Tuḥfat al-mawdūd bi-aḥkām al-mawlūd*. Dār al-Kutub al-ʿIlmiyyah. (Original work published ca. 1350 CE), n.d.

[7] T. Eich, Who is a Parent? Parenthood in Islamic Ethics, *Journal of Medical Ethics*, *33*(10), (605–609), 2007. DOI: https://doi.org/10.1136/jme.2005.015396

Serrano-Ruano of Sunni fiqh councils, noting persistence of the minimum to avert zina implications, while many codes shorten maxima to one year (e.g., Morocco's 2004 Mudawwana) for medical harmony.[8] DNA testing remains contentious: the Islamic Fiqh Council endorses it as corroborative for affirming nasab but cautions against negating marital presumptions.[9] Haneef and Abdul-Rahman advocate cautious integration in Malaysian and broader contexts,[10] while Shaham illustrates Egyptian courts' preference for legal over biological paternity.[11]

Historical and Doctrinal Background

The concept of paternity (nasab) in Islamic jurisprudence represents a profound intersection of divine revelation, prophetic tradition, and human reasoning, evolving from the foundational texts of Islam to become a cornerstone of family law. At its core lies the imperative to preserve lineage, protect familial honor, and ensure social stability principles radically reshaped by Islam against the backdrop of pre-Islamic Arabian customs. In the Jāhiliyyah era, paternity was often determined biologically or through tribal affiliations, sometimes permitting practices like temporary marriages (mutʿah) or adoption that obscured lines of descent.[12] Islam elevated nasab to a legal construct primarily anchored in licit marital unions, severing it from mere biological ties and subordinating it to ethical and religious norms. This transformation is evident in the Qurʾān's emphasis on chastity and the prohibition of zina (adultery/fornication),

Allah says:

> *"The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you believe in Allah and the Last Day. And let a group*

[8] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022.

[9] Islamic Fiqh Council of the Muslim World League. Resolution on the use of DNA fingerprinting in proving or disproving lineage, … 2002.

[10] S. S. S., Haneef, DNA test of paternity in Islamic law: Implications for children born less than minimum gestation period in Malaysia, *Hamdard Islamicus*, *39*(2), (7–35). 2016. and Abdul-Rahman, A., *Paternity and its establishment under Islamic law: A case for the admissibility of DNA to establish paternity*. International Journal of Multidisciplinary Research Studies and Innovations, 2024. Available at https://www.ijmrsti.com/wp-content/uploads/2024/04/Paternity-and-Its-Establishment-Under-Islamic-Law-A-Case-for-the-Admissibility-of-DNA-to-Establish-Paternity.pdf

[11] R., Shaham, Competition between legal and biological paternity in an Egyptian court, *Islamic Law and Society*, *18*(2), (219–249). 2011. DOI: https://doi.org/10.1163/156851911X571355

[12] J. Schacht, *The origins of Muhammadan jurisprudence*. Oxford University Press. 1950.

> *of the believers witness their punishment. The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers."*[13]

The doctrinal foundations of paternity rulings are derived directly from the Glorious Qurʾān and Sunnah of the noble prophet. The Qurʾān does not explicitly stipulate gestation periods but provides inferential guidance through verses on pregnancy and weaning. A key deduction comes from Qurʾān

> *"And We have enjoined upon man [care] for his parents. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months, until, when he reaches maturity and reaches [the age of] forty years, he says, 'My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims"*[14]

"And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is the [final] destination"; and in another verse of the Qurʾān 2:233: *"Mothers may nurse [breastfeed] their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is their [i.e., the mothers'] provision and their clothing according to what is acceptable..."*. By subtracting the recommended two-year weaning period from the thirty-month total mentioned in 46:15, classical scholars deduced a minimum gestation of six lunar months. This calculation, articulated in early exegeses by the Tābiʿūn, establishes a viability threshold: a child born before this period is presumptively from pre-marital conception.[15]

[13] Q24:2-3
[14] Q46:15
[15] Dar al-Ifta al-Misriyyah. *What is the minimum gestation period according to Islamic law?*, n.d. available at https://www.dar-alifta.org/en/fatwa/details/6111/what-is-the-minimum-gestation-period-according-to-islamic-law

Complementing the Qurʾānic framework, prophetic ḥadīth provide explicit guidance on paternity attribution, such as the principle of firāsh ("the child belongs to the bed") and the procedure of liʿān (mutual imprecation) outlined in Qurʾān 24:6–9:

> *"And those who accuse their wives [of adultery] and have no witnesses except themselves then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful. And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars. But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars. And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful.*[16]

Early rulings also abolished pre-Islamic adoption practices that fictitiously altered lineages, as condemned in Qurʾān.

> *"Allah has not made for a man two hearts in his interior. And He has not made your wives whom you declare unlawful your mothers. And He has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way. Call them by [the names of] their fathers; it is more just in the sight of Allah..."*[17].

The evolution of these rulings spanned Islamic history, beginning in the Prophetic era and solidifying during the formative period of fiqh (7th to 9th centuries C.E.). Companions like ʿUmar ibn al-Khaṭṭāb applied these principles in judgments, setting precedents for later schools. By the Abbasid era, medieval jurists systematized gestation doctrines, incorporating contemporary medical knowledge and analogical reasoning (qiyās). For example, Abū Ḥanīfa (d. 767) and his disciples fixed the minimum at six months from the marriage contract, favoring the child's nasab even without consummation evidence (al-Sarakhsī, n.d.). In contrast, Mālik

[16] Q24:6-9
[17] Q33:4-5

ibn Anas (d. 795) and later Mālikīs emphasized practical access for intercourse, reflecting Medinan practice (ʿamal).[18]

Doctrinal variations emerged particularly around maximum gestation periods to accommodate uncertainties in an era without modern diagnostics. While the six-month minimum enjoys near-universal consensus (ijmāʿ), maxima differ: Ḥanafīs cap it at two years; Shāfiʿīs and Ḥanbalīs at four; and some Mālikīs at five or seven, often prioritizing doubt resolution (shubha) to avoid illegitimacy stigma.[19] These extensions trace to early fatwās, such as those linked to ʿĀʾishah on prolonged pregnancies. Such flexibility addressed pre-Islamic influences like extended absences due to trade or warfare, ensuring children were not unjustly disowned.[20] This doctrinal edifice reflects Islam's adaptive jurisprudence, balancing scriptural fidelity with human realities. From its Qurʾānic roots to classical elaborations, paternity law evolved to safeguard maqāṣid such as preserving progeny (ḥifẓ al-nasl) while responding to societal shifts a legacy that informs contemporary debates.

Analysis of Paternity in Cases of Early Birth

In Islamic jurisprudence, assigning paternity (*nasab*) to a child born prematurely- specifically, less than six lunar months after the marriage contract, creates a strong presumption of illegitimacy, which stems from the doctrinal goal of preserving lineage and discouraging illicit relationships (zina). This presumption functions as a protective mechanism, guaranteeing that only children conceived within the confines of a lawful marriage are affiliated with the husband, thereby protecting the *maqāṣid* al-Sharīʿah (objectives of the law) such as preserving offspring (*ḥifẓ al-nasl*) and family honor. Classical jurists, drawing from Qurʾānic inferences on gestation such as Qurʾān 46:15 “And We have enjoined upon man [care] for his parents. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months...”, Qurʾān 2:233 “Mothers may nurse [breastfeed] their children two complete years for whoever wishes to complete the nursing [period]...”, and Qurʾān 31:14 “And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years...” established six months as the minimum feasible pregnancy period, below which a birth presumptively implies

[18] Ibn Rushd, A. al-W. M. *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid* (Volumes. 1–4). Dār al-Kutub al-ʿIlmiyyah. (Original work published ca. 1198 CE), n.d.
[19] Ibn Qayyim al-Jawziyya. *Tuḥfat al-mawdūd bi-aḥkām al-mawlūd*, … n.d.
[20] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022.

pre-marital conception. This threshold, having broad acceptance (*ijmāʿ*) among the Sunni schools, reflects a combination of scripture exegesis with early medical observations, where fetal viability was regarded unlikely before this point.[21] However, the application of this rule differs throughout the *madhāhib*, with each school presenting complex interpretations about evidence requirements, exclusions,] and rebuttals. This section investigates various school-specific approaches, emphasizing doctrinal differences while emphasizing common commitments to equality and doubt resolution (shubha).

The Ḥanafī school adopts a rather rigid and formalistic approach to the six-month threshold, emphasizing the marital contract (ʿaqd) as the beginning point for gestation computation. According to Imam Ḥanafī jurists, a child born before six lunar months from the contract date is presumed illegitimate (walad zinā) and thus affiliated solely with the mother, unless the father explicitly acknowledges paternity (*iqrār*) or provides compelling evidence of consummation within the timeframe.[22] This position favors textual precision over biological variability, stating that the presumption of legitimacy (aṣl al-istiṣḥāb) only applies once the minimal period elapses. According to Abu Ḥanīfa (d. 767) and his disciples such as al-Shaybānī, explained this through qiyās (analogy) to observed human gestation, dismissing shorter pregnancies as aberrations suggestive of earlier unions.[23] Exceptions are limited: for instance, if the husband admits to pre-contract intercourse (which would invalidate the marriage) or if witnesses corroborate a prior, secret consummation. In reality, this rigidity seeks to prevent fraudulent claims but has garnered criticism for possibly disadvantaging children, as Ḥanafī decisions deny such offspring inheritance or maintenance from the putative father without acknowledgment.[24]

In contrast, the Mālikī school places higher stress on physical and evidentiary realism, requiring not only the passing of six months but also proof of possible consummation (istiṭāʿat al-waṭʾ), such as cohabitation or seclusion (khalwa). Mālik ibn Anas (d. 795) and other scholars interpreted births before this threshold as evidence of zina, thinking the child belongs to the mother alone unless rebutted through *liʿān* (mutual imprecation) or other witnesses.[25] This

[21] Ibn Qayyim al-Jawziyya. *Tuḥfat al-mawdūd bi-aḥkām al-mawlūd*, … n.d.
[22] M. B. A. Al-Sarakhsī, *Al-Mabsūṭ* (Vols. 1–30). Dār al-Maʿrifah. (Original work published ca. 1090 CE), n.d.
[23] A. Abdul-Rahman, *Paternity and its establishment under Islamic law: A case for the admissibility of DNA to establish paternity*, … 2024.
[24] S. S. S., Haneef, DNA test of paternity in Islamic law: Implications for children born less than minimum gestation period in Malaysia, ... 2016.
[25] Ibn Rushd, A. al-W. M. *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid,* … n.d. and Al-Bukhārī, M. i. I. *Ṣaḥīḥ al-Bukhārī*. (Original work compiled ca. 846 CE), n.d.

school combines Medinan practice (ʿamal) with public interest (maṣlaḥa), allowing for flexibility in times of doubt. For instance, if medical testimony indicates a premature but viable birth, the presumption may be overruled to safeguard the child's *nasab*.[26] *Liʿān* processes, as outlined in Qurʾān 24:6-9, play a key role here, enabling the husband to dispute paternity by sworn oaths, culminating in divorce and the child's maternal attachment. Mālikīs thus balance presumption with empirical investigation, often favoring decisions that reduce social stigma on the mother and child.

The Shāfiʿī school combines qiyās more completely, connecting the six-month minimum with biological analogies from ḥadīth and early science. According to Al-Shāfiʿī (d. 820), a child born before six months post-intercourse is presumed illegitimate and cannot be attributed to the spouse.[27] This position, mirrored in writings like al-Nawawī's Minhāj al-Ṭālibīn, permits minimal gestation variability but insists on evidentiary standards, such as spousal testimony or community knowledge of marital access. Exceptions exist through *iqrār* or if the birth comes exactly at six months, where legitimacy is believed to err on the side of *nasab* preservation. Shāfiʿīs also address doubts (shubha) by prioritizing the child's wellbeing, perhaps allowing affiliation if zina claims lack four witnesses, per Qurʾānic ḥudūd standards Qurʾān 24:4: "And those who accuse chaste women and then do not produce four witnesses lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient."

The Ḥanbalī school, recognized for its textualist rigidity, adheres strictly to literal ḥadīth interpretations, such as the *firāsh* principle ("the child belongs to the bed"), while imposing the six-month threshold from the contract or consummation.[28] Aḥmad ibn Ḥanbal (d. 855) and followers like Ibn Qayyim urged strict adherence, presuming illegitimacy for early births to avoid promoting zina. However, Ḥanbalīs are flexible in treating shubha, when justifiable doubt, such as misdated marriages or medical anomalies, can be rebutted through judicial investigation (bayyina). *Liʿān* remains a vital rebuttal weapon, and admission is acceptable if voluntary and uncoerced.

[26] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022.

[27] Z. I. Zainuddin, N. Noraini, M. A. Ahmad, F. M. Khalid, & A. Ab Rahman, The legal status of a child born out of wedlock in the perspective of Syafi'i and Hanafi schools. *Jurnal Comparativa*, *3*(1), (1–13). 2023. DOI: https://doi.org/10.59141/comserva.v3i01.134

[28] Ibn Qayyim al-Jawziyya. *Tuḥfat al-mawdūd bi-aḥkām al-mawlūd*, … n.d. and Al-Ḥillī, J. *Sharāʾiʿ al-Islām fī masāʾil al-ḥalāl wa al-ḥarām* (Vols. 1–4). Dār al-Qāriʾ. (Original work published ca. 1325 CE), n.d.

Exceptions and rebuttals are used in all institutions to soften the severity of the presumption. Common circumstances include erroneous date computations, where recalibration affirms legitimacy, or spouse testimony validating pre-birth consummation. Medical malformations, albeit rare in classical discourse, are increasingly addressed in current fatwās, with some jurists adding premature viability evidence without abandoning the threshold. Acknowledgment (*iqrār*) acts as a general exception, permitting voluntary paternal association, however it cannot retrospectively validate zina. In cases of denial, *liʿān* dissolves the marriage and severs *nasab*, protecting against false allegations while guaranteeing the child's maternal rights to inheritance and care.[29] Therefore, this study indicates a jurisprudential equilibrium: while the presumption of illegitimacy maintains moral order, inter-school differences and exceptions reflect fiqh's adaptive ethos, favoring equality amid human fallibility. These concepts continue to impact contemporary family law, when scientific methods like DNA testing challenge established evidentiary paradigms.

Comparative and Contemporary Dimensions

The Sunni schools of law (*madhāhib*) exhibit a deep interplay of doctrinal consensus and divergence in the Islamic jurisprudential framework for paternity attribution in cases of children born less than six lunar months after marriage. Its modern manifestations show ongoing negotiations between tradition, statutory reform, and scientific advancement. The four (4) madhāhib share a commitment to the six-month minimum gestation period, based on Qurʾānic inferences such as Qurʾān 46:15 ("And We have enjoined upon man [care] for his parents. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months..." and Qurʾān 2:233 "Mothers may nurse [breastfeed] their children two complete years for whoever wishes to complete the nursing [period]..." and the prophetic principle of firāsh, as stated in the ḥadīth: "The child belongs to the [owner of the] bed, and for the adulterer is the stone" (Ṣaḥīḥ al-Bukhārī, Hadith no. 2053).

This threshold presumptively labels earlier births as illegitimate (walad zinā), affiliating the child only to the mother to preserve lineage integrity and deter illicit pregnancies (Ibn Rushd, n.d.). The methodological priorities of each school, such as formalistic contractualism (Ḥanafī), evidence realism (Mālikī), analogical precision (Shāfiʿī), or textualist rigor with doubt

[29] T. Eich, Who is a Parent? Parenthood in Islamic Ethics, ... 2007.

accommodation (Ḥanbalī), are reflected in substantive distinctions in application.[30]

These inter-school variations are reflected in several core aspects: the Ḥanafī school calculates the gestation period from the marriage contract (ʿaqd) and applies a low evidentiary threshold, favoring presumption of legitimacy even at exactly six months; the Mālikī school begins from consummation or valid seclusion (khalwa), demanding high proof of access (istiṭāʿa) and often invoking liʿān; the Shāfiʿī school starts from actual consummation, using moderate qiyās-based standards; and the Ḥanbalī school counts from contract or consummation, maintaining strict textualism with flexibility for doubt (shubha). For births before six months, all schools presume illegitimacy, but outcomes and exceptions differ: Ḥanafīs require explicit acknowledgment (iqrār) or voluntary affiliation, often denying paternal inheritance without it; Mālikīs prioritize maternal affiliation with stigma mitigation via shubha or medical testimony; Shāfiʿīs err toward nasab preservation through spousal testimony or doubt resolution; and Ḥanbalīs allow judicial inquiry (bayyina) to balance strictness with child welfare.[31] This highlights fiqh's internal pluralism: Ḥanafī forbearance toward contractual formality promotes nasab protection in uncertain settings, while the majority's stress on consummation shields against false marital claims. Such ikhtilāf (legitimate dispute) represents the tradition's adaptive resilience, permitting contextual application while sustaining essential maqāṣid al-Sharīʿah, including progeny preservation (ḥifẓ al-nasl) and societal equality.[32]

In modern contexts, classical concepts face significant difficulties in Muslim-majority legal systems, as codification, human rights discourses, and biomedical developments intersect with fiqh. Many countries keep the six-month minimum as a bulwark against zina consequences, however revisions increasingly stress child welfare and gender justice. For example, Morocco's 2004 Mudawwana reforms, which reflect maṣlaḥa-driven *ijtihād* without fully embracing DNA as primary proof, maintain traditional gestation thresholds while introducing judicial mechanisms for paternity establishment via acknowledgment or evidence in unregistered unions (fātiḥa marriages).[33] Similarly, Tunisia's progressive Code du Statut Personnel

[30] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022.

[31] M. B. A. Al-Sarakhsī, *Al-Mabsūṭ* (Vols. 1–30). Dār al-Maʿrifah, … n.d.; Ibn Qayyim al-Jawziyya. *Tuḥfat al-mawdūd bi-aḥkām al-mawlūd*, … n.d. and Zainuddin, Z. I., Noraini, N., Ahmad, M. A., Khalid, F. M., & Ab Rahman, A. The legal status of a child born out of wedlock in the perspective of Syafi'i and Hanafi schools, ... 2023.

[32] Muslim ibn al-Ḥajjāj. *Ṣaḥīḥ Muslim*. (Original work compiled ca. 875 CE), n.d.

[33] Global Rights. *The Moroccan family code (Moudawana) of February 5, 2004: An unofficial English translation*. 2005. Available at

(amended post-2011) stresses equality, implicitly fighting illegitimacy stigma by promoting *nasab* through current evidence standards, yet gestation rules exist in judicial practice. On the other hand, more conservative settings such as Malaysia (dominated by Shāfiʿī) and Pakistan (influenced by Ḥanafī doctrine through the Muslim Family Laws Ordinance) strictly categorize early births as illegitimate, denying paternal rights absent voluntary acknowledgment, and courts are cautious about DNA overriding Sharīʿah presumptions.[34]

Egyptian case law highlights the tension between legal and biological paternity: courts regularly prefer *firāsh* and marital presumptions, even when DNA suggests otherwise, to maintain social order and avoid disturbing established families.[35] In 2002, the Islamic Fiqh Council endorsed DNA fingerprinting as corroborative evidence for affirming or denying *nasab* in disputes, but prohibited its use to negate marital beds or *liʿān* outcomes due to risks to family stability and moral deterrence.[36]

Scientific development further confuses these dimensions. Modern neonatology shows premature viability as early as 22-24 weeks, contradicting the classical six-month (lunar) threshold; however, most fiqh councils and legislations maintain the minimum to maintain doctrinal coherence, shortening only maximum periods (e.g., to one year in Morocco and Jordan) for medical alignment.[37] Advocates for change suggest that integrating DNA as qarīna (circumstantial indication) could settle issues compassionately, particularly for vulnerable mothers and children facing shame or rights deprivation. Critics, however, advise against degrading Sharīʿah safeguards, potentially encouraging pre-marital interactions or compromising confidence in marriage.[38] The UN Convention on the Rights of the Child, which places a high priority on nondiscrimination and patriarchal prejudices in conventional rulings;

https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf

[34] S. S. S., DNA Haneef, test of paternity in Islamic law: Implications for children born less than minimum gestation period in Malaysia, ... 2016. And R. Othman, & M. A. Abdullah, Reconstructing the law of *nasab* for children born with a gestation period of less than six months in Malaysia. *Hadhanah: Jurnal Kajian Hukum Keluarga Islam*, *2*(1), (1–15), 2023. Available at https://journal.ar-raniry.ac.id/index.php/Hadhanah/article/download/8480/3380/24244

[35] R., Shaham, Competition between legal and biological paternity in an Egyptian court, ... 2011.

[36] Islamic Fiqh Council of the Muslim World League. Resolution on the use of DNA fingerprinting in proving or disproving lineage, … 2002. and A. Shabana, Paternity between law and biology: The reconstruction of the Islamic law of paternity in the wake of DNA testing. *Zygon: Journal of Religion and Science*, *47*(1), (214–239), 2012. DOI: https://doi.org/10.1111/j.1467-9744.2011.01248.x

[37] D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022. and T. Eich, Who is a Parent? Parenthood in Islamic Ethics, ... 2007.

[38] A. Abdul-Rahman, *Paternity and its establishment under Islamic law: A case for the admissibility of DNA to establish paternity*, … 2024.

where women bear main responsibility for 'illegitimate' children are examples of broader socio-legal ramifications. Emerging research advocates for revitalized *ijtihād*, balancing textual authenticity with contemporary *maqāṣid*, to mitigate sufferings while preserving ethical imperatives.

Ultimately, these comparative and current lenses reveal Islamic paternity law as a dynamic tradition: united in theory, diversified in application, and robust against modernity's constraints.[39]

Discussion

The following argument shows the persistent tension within Islamic law between the obligation to perpetuate lineage (*nasab*) and the human realities of doubt, error, and fragility that underlie family life. At its core, the six-month minimum gestation threshold, deduced from Qurʾānic provisions and supported by prophetic tradition functions not just as a biological marker but as a moral and social border, demarcating licit marital conception from potential unlawful beginnings. A strong commitment to the *maqāṣid al-Sharīʿah,* especially *ḥifẓ al-nasl* (preservation of progeny), which classical jurists understood as inseparable from ethical deterrence and communal stability, is reflected in this doctrinal edifice, which enjoys broad consensus across the *madhāhib*.[40] Yet, the variations across schools; Ḥanafī contractual formalism vs. the majority's stress on consummation reveal fiqh's hermeneutical diversity, a feature of Islamic legal tradition that accepts contextual application without fracturing unity.

In combining these findings, one notices an intentional jurisprudential equilibrium: the presumption of illegitimacy for early deliveries safeguards against zina's societal repercussions, while exceptions (*iqrār*, *liʿān*, shubha) introduce flexibility, reducing undue suffering on mothers and children. This balance, however, invites critical reflection on ingrained power relations. Traditional verdicts, fashioned largely by male scholarly voices in pre-modern contexts, often lay disproportionate obligations on women, whose dignity and agency become subjects of evidentiary contestation.[41] The stigma associated with walad zinā, despite being limited to paternal affiliation, can exacerbate gender inequities in inheritance,

[39] D. Serrano-Ruano, Redefining paternal filiation through DNA testing: Law and the children of unmarried mothers in the Maghreb, … 2018.

[40] A. Ibn Rushd, al-W. M. *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid,* … n.d. and D. Serrano-Ruano, The duration of pregnancy in contemporary Islamic jurisprudence (fiqh) and legislation: Tradition, adaptation to modern medicine and (in) consequences ... 2022.

[41] R. Shaham, Competition between legal and biological paternity in an Egyptian court, ... 2011.

custody, and communal acceptance. This is a concern highlighted by feminist and human rights scholarship.[42]

This balance is further complicated by contemporary contacts with science. Advances in neonatology and genetics contradict the classical threshold's empirical underpinnings, however fiqh councils and legislations largely retain it, valuing moral-symbolic functions above biological precision.[43] DNA testing, handled as corroborative rather than conclusive, highlights a cautious *ijtihād* that resists disturbing marital presumptions, reflecting historical expansions of maximum gestation to resolve disputes benevolently. Statutory reforms in places like Morocco indicate adaptive potential, harmonizing tradition with child welfare imperatives, but conservative implementations elsewhere highlight opposition to change, frequently anchored in fears of deteriorating ethical norms despite increased premarital connections.[44]

These issues hold major implications for policy and ethics in Muslim cultures. Family courts considering such situations must evaluate textual authenticity against equitable outcomes, particularly for vulnerable children denied father rights. The discourse also overlaps broader humanities concerns: how religious law negotiates modernity's disruptions to kinship, reflecting anthropological questions into lineage as produced rather than purely biological. In an era of global mobility and diverse legal systems, these verdicts affect diasporas groups, when disputes with secular laws on paternity testing and child rights arise.[45]

This study's limitations should be acknowledged. Its doctrinal focus and reliance on textual sources obscure the empirical lived experiences of impacted families, leaving a gap that could be filled by ethnographic research. Moreover, the historical male-centricity of fiqh literature constrains interpretive range, underlining the necessity for inclusive modern scholarship. Ultimately, the jurisprudence on early births shows Islamic law's dynamic character—rooted in revelation yet adaptable to human conditions. It invites continuing *ijtihād* that honors key aims while integrating scientific and ethical findings for better fairness.

[42] S. S. S., Haneef, DNA test of paternity in Islamic law: Implications for children born less than minimum gestation period in Malaysia, ... 2016.
[43] T. Eich, Who is a Parent? Parenthood in Islamic Ethics, ... 2007. and Islamic Fiqh Council of the Muslim World League. Resolution on the use of DNA fingerprinting in proving or disproving lineage, 2002.
[44] A. Shabana, Paternity between law and biology: The reconstruction of the Islamic law of paternity in the wake of DNA testing, ... 2012.
[45] Carsten, J. *After kinship*. Cambridge University Press, 2004.

Conclusion

In conclusion, this study has done a comprehensive doctrinal investigation of paternity attribution (*nasab*) in Islamic jurisprudence for children born less than six lunar months following the contraction of marriage. The investigation, based on Qurʾanic exegesis and prophetic tradition, reveals a near-unanimous consensus (*ijmāʿ*) on the six-month minimum gestation period as a critical threshold for presumptive legitimacy. This serves as a normative mechanism to safeguard lineage integrity and uphold the *maqāṣid al-Sharīʿah,* particularly the preservation of progeny (*ḥifẓ al-nasl*). While acknowledging common commitments to moral deterrence and equitable doubt resolution through tools like acknowledgment (*iqrār*), mutual imprecation (*liʿān*), and consideration of ambiguity (shubha), inter-madhhab comparisons reveal methodological pluralism, which is evident in differences over calculation commencement and evidentiary standards. Contemporary exchanges further highlight the tradition's survival amid biological and legislative advancements. Although scientific evidence of premature viability and genetic testing calls into question classical empirical assumptions, current fiqh council resolutions and legislative codifications maintain the threshold as a symbolic and ethical barrier, cautiously incorporating modern tools as corroborative rather than dispositive evidence. This adaptive constraint, while preserving household stability, poses significant considerations regarding gender dynamics and child welfare in heterogeneous legal contexts. The jurisprudence discussed here demonstrates the dialectical interaction between contextual *ijtihād* and textual integrity that is fundamental to Islamic legal hermeneutics. It gives a structure powerful enough to sustain societal growth while sufficiently adaptable to satisfy human demands.

Recommendations

Judicial authorities in Muslim-majority jurisdictions are encouraged to use contextual *ijtihād* in paternity disputes, allowing scientific evidence like DNA testing as corroborative qarāʾin (indications) that align with Sharīʿah objectives and mitigate hardship without undermining the *firāsh* presumption. Legislative reforms should highlight child-centered measures, drawing on maṣlaḥa mursala to assure non-discriminatory access to maintenance, inheritance, and social support, independent of contested *nasab*. Scholarly groups, like fiqh academies, should publish new guidelines using interdisciplinary insights from medicine and ethics to refine gestation verdicts.

Prospective studies should look into the socio-psychological effects of illegitimacy classifications on families, expand comparative analyses to include Shia jurisprudence and non-Sunni traditions, and critically examine intersections with international human rights instruments like the Convention on the Rights of the Child. Interdisciplinary collaborations linking fiqh with anthropology, genetics, and gender studies would further increase interpretive depth and inform equitable changes.

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