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Born Guilty: Paternal Abandonment and The Legal Invisibility of Illegitimate Children in Pakistan

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ABSTRACT

This research paper examines the precarious legal status of children born out of wedlock in Pakistan, a group that Pakistani law, society, and religious jurisprudence collectively render nearly invisible. Branded as walad-ul-zina (children of fornication), these children are stripped of paternal lineage (nasab), denied inheritance rights under personal law, excluded from social protection systems, and left entirely at the mercy of a legal framework that systemically privileges the father's freedom over the child's survival. This paper argues that Pakistan's domestic law, as it currently operates, enables a near-complete escape route for biological fathers: they face no civil liability for the existence of their child, no mandatory financial obligation, and no meaningful legal compulsion to acknowledge paternity. Drawing on the Constitution of Pakistan 1973, the Muslim Family Laws Ordinance 1961, the Guardianship and Wards Act 1890, UNCRC obligations, comparative jurisprudence from Muslim-majority states, and Islamic doctrines of concubinage (milk al-yamin) and temporary marriage (nikah al-mut'a), this paper demonstrates that the child, not the father, bears the full burden of illegitimacy. The paper concludes with legislative recommendations to establish civil paternity recognition, mandatory DNA-based maintenance orders, and a statutory framework for the rights of children born outside of marriage, consistent with both constitutional guarantees and Islamic principles of justice (adl) and prevention of harm (darar).

Keywords: *Illegitimate children, walad-ul-zina, nasab, paternity, family law Pakistan, child rights, maintenance, UNCRC, zina ordinance, foundlings, DNA evidence, constitutional rights, milk al-yamin, nikah al-mut'a*

INTRODUCTION

Born Guilty? The question lies at the heart of this research paper. Because in many conservative societies, particularly in Pakistan, children born out of wedlock carry the weight of their parents' act and are not treated as innocent but guilty.[1] The core aim of this study is to protect the interests of illegitimate children despite their birth status, insisting that the child who commits no act should bear no legal penalty.

The term 'illegitimate' originated from the Latin *illegitimus*, meaning 'not according to the law.'[2] When a child is born outside the bonds of *nikah* (marriage) in Pakistan, the law does not ask who is responsible. It asks what the child is. And the answer Pakistani law provides quietly, through omission, classification, and doctrinal construction, is that such a child is nobody's: not legally the father's, not entitled to his name, not entitled to inherit from him, not entitled to maintenance through any compulsory civil mechanism.[3] The child arrives in the world already carrying a verdict it did not earn: illegitimate.

The father, by contrast, walks away clean. Pakistani law imposes no civil liability upon a man for fathering a child outside of marriage.[4] He faces no mandatory paternity suit, no automatic maintenance obligation,

and no legal presumption that holds him accountable. The Hudood Ordinances, now partially amended, historically punished mothers more readily than fathers.[5] The silence of personal law statutes on the rights of *walad-ul-zina* has been treated not as a gap to be filled, but as a settled matter to be left undisturbed.

This paper is an attempt to name that structural injustice with legal precision. It examines how Pakistani law constructs the category of illegitimacy, how fathers are insulated from accountability, how the Constitution's broad rights framework fails to encompass these children, how classical Islamic institutions including concubinage and *mut'a* marriage contain latent protections for children born of non-standard unions, and what reforms consistent with both Islamic jurisprudence and international human rights norms can close the gap between the child's needs and the law's indifference.

The central argument is this: the illegitimacy framework in Pakistan is not a neutral doctrinal position. It is a legal architecture that transfers the full cost of non-marital reproduction onto the child, while offering the biological father near-complete impunity.[6] This is neither constitutionally defensible nor Islamically inevitable.

DEFINING ILLEGITIMACY IN PAKISTANI LAW

The Concept of Walad-ul-Zina in Classical Fiqh

Classical Islamic jurisprudence, specifically the Hanafi school dominant in Pakistan, draws a categorical distinction between the *walad-ul-shubha* (child born of a mistaken or ambiguous union) and the *walad-ul-zina* (child of fornication or adultery).[7] The former may be accorded lineage under certain conditions; the latter is categorically denied *nasab* from the biological father. The child may be attributed to the mother but never to the father if the union was unlawful.

This classical position, however, was articulated in a context where the state had no civil law infrastructure, where paternity disputes were resolved by community oaths and physical resemblance, and where the concept of DNA evidence was centuries away.[8] The uncritical transplantation of this doctrine into a modern constitutional state has produced outcomes, the classical jurists did not anticipate and may not have endorsed. As Pearl and Menski observe, the Islamic family law applied in South Asian courts often reflects the crystallised opinions of medieval jurists rather than the Quran's own emphasis on equitable treatment of the vulnerable.

Statutory Silence as a Legal Position

Pakistan has no statute that defines or regulates the status of illegitimate children in civil law.[9] The Muslim Family Laws Ordinance 1961 addresses marriage, divorce, and maintenance, but only within the context of valid matrimonial unions. The West Pakistan Family Courts Act 1964 confers jurisdiction over maintenance but is silent on claims by or on behalf of non-marital children against biological fathers. The Guardianship and Wards Act 1890, a colonial-era statute, does not address the guardianship rights of children born out of wedlock in any principled manner.

This silence is not neutral. In law, the absence of a right is the same as its denial.[10] A child who cannot bring a claim, cannot register a father's name, cannot inherit, and cannot compel maintenance that child is legally abandoned, not merely legally uncertain. As the Supreme Court of Pakistan has recognised in analogous welfare contexts, the state cannot discharge its Article 35 obligations by simply failing to legislate.

Birth Registration and the Name Column

Pakistan's registration system under the Births, Deaths, and Marriages Registration Act 1886 and the NADRA framework requires the father's name on a birth certificate.[11] Where the father is unknown, unacknowledged, or hostile, the child may be registered without a paternal name, effectively stamping 'illegitimate' onto the child's first official document. This has cascading consequences: access to schooling, B-form/CNIC issuance, inheritance proceedings, and passport applications all depend on the chain of paternal identity that these children cannot establish.

UNICEF's 2023 assessment of child protection in Pakistan found that birth registration rates among children of unmarried mothers remain critically low, with many such children unable to access education or healthcare due to documentation gaps.[12] The registration regime is not merely administratively inconvenient, it is a structural mechanism of social exclusion.

THE CHILD'S LEGAL STATUS: NASAB, LINEAGE, AND THE WALL OF EXCLUSION

Nasab and Its Legal Consequences

In Islamic law, *nasab*, legal paternity or lineage, is the gateway to a cascade of rights: maintenance (*nafaqa*), inheritance (*mirath*), guardianship (*wilayah*), and the child's family name.[13] For children born within wedlock, *nasab* is established by the legal presumption of the marriage: any child born within the minimum gestation period is presumed to be the husband's child. This presumption (known as *farash* in classical *fiqh*) is powerful and nearly irrebuttable in Pakistani courts, as reaffirmed in *Khurshid Bibi v Muhammad Amin* PLD 1967 SC 97.

For children born outside marriage, no such presumption exists. And without *nasab*, there is no maintenance obligation, no inheritance right, and no formal relationship with the father recognised by law.[14] The child exists in a legal vacuum, biologically the product of two people, but legally the child of only one.

Maintenance: The Gap in Nafaqa

Under the Dissolution of Muslim Marriages Act 1939 and the Muslim Family Laws Ordinance 1961, a father is obligated to maintain his legitimate children.[15.] Section 17-A of the West Pakistan Family Courts Act and general Hanafi principles make clear that this obligation runs to children born of valid marriages. No equivalent statutory obligation exists for children born outside marriage.

Some courts have attempted to extend maintenance obligations using the Guardianship and Wards Act's welfare jurisdiction, but these rulings have been inconsistent and are not binding as a matter of established precedent.[16] The biological father can, in most Pakistani courts, plead that he has no legal relationship with the child and succeed. This outcome conflicts directly with the Quranic injunction that no soul shall bear the burden of another (Quran 6:164).

Inheritance Rights

Pakistani Muslim personal law governing inheritance is derived from classical Hanafi *fiqh* as reflected in the succession provisions applicable under the Muslim Personal Law (Shariat) Application Act 1962.[17] Under this framework, inheritance flows through *nasab*. A child without legal paternity cannot inherit from the biological father, his estate, or his relatives. The child may inherit from the mother and her relatives, but this is a heavily truncated inheritance network.

This is not merely a technical rule. In a property-holding society where land, agricultural assets, and commercial enterprises pass through male lineage, exclusion from paternal inheritance is economic disenfranchisement of a permanent and inter-generational nature.[18] Esposito and DeLong-Bas have noted that this structural exclusion disproportionately affects women and children in South Asian Muslim communities, compounding poverty across generations.

Guardianship and Custody

The Guardianship and Wards Act 1890 applies to all children regardless of religion for purposes of guardianship, with courts directed to apply the welfare principle.[19] However, in practice, where the father has not acknowledged the child, he cannot easily be compelled to assume guardianship, and yet the mother's guardianship rights are also limited by the presumption that biological fathers are natural guardians under Hanafi law. For children without acknowledged fathers, the result is often an institutional vacuum: neither parent is legally compelled to provide structured guardianship, and the state has no mechanism to fill the gap except through the sparse and underfunded juvenile welfare system.

HOW FATHERS ESCAPE: LEGAL ARCHITECTURE OF IMPUNITY

The central concern of this paper is not merely the child's deprivation; it is the mechanics by which the biological father exits the picture entirely, legally, practically, and socially.[20] The following structural features of Pakistani law create what amounts to a systematic escape route for fathers.

No Civil Paternity Action

In the common law world, paternity actions allow a court to adjudicate whether a named man is the biological father of a child, and to attach legal obligations accordingly.[21] England has the Child Support Act 1991; the United States has Title IV-D enforcement mechanisms; India has Section 125 CrPC, which courts have interpreted expansively to cover illegitimate children. Pakistan has no equivalent statute. A mother cannot file a civil paternity suit. There is no legal procedure by which a biological father can be named, compelled to submit to DNA testing, and held financially responsible for a child born outside marriage through a dedicated judicial mechanism.

DNA Evidence: Admitted in Theory, Irrelevant in Practice

Pakistan's courts have on occasion admitted DNA evidence in paternity-related disputes, particularly in the context of inheritance and fraud cases.[22] The DNA Forensic Laboratory under the Federal Investigation Agency exists. However, in the context of illegitimate children's maintenance claims, DNA evidence has not been systematically used to compel paternal responsibility. Courts have held, in line with classical doctrine, that biological paternity without legal marriage does not create the same obligations as matrimonial paternity. A father can be proven to be the biological father by DNA evidence and still escape maintenance obligations by pleading the absence of *nikah*.

The Acknowledgement (Iqrar) Doctrine: Power Without Obligation

Classical Hanafi law does permit a father to voluntarily acknowledge (*iqrar*) a child as his own, which would then establish *nasab* and its attendant rights.[23] However, and this is the critical gap, it is entirely voluntary. No court can compel a father to acknowledge a child. No authority can order acknowledgement. The power to confer legal existence upon a child is entirely in the father's hands, and he may withhold it without legal consequence.

Social and Institutional Collusion

The legal impunity of biological fathers is reinforced by institutional practices. Police frequently refuse to register FIRs for maintenance-related complaints involving non-marital children.[24] Family courts routinely decline jurisdiction over such claims. NADRA registration officials have been reported to refuse registration of children without paternal names. Community institutions, such as biradari councils, mosques, and jirgas, typically resolve disputes in ways that protect male family honour rather than the welfare of the illegitimate child.

The Criminalisation Asymmetry

Under the Offence of Zina (Enforcement of Hudood) Ordinance 1979, the criminal law framework made it possible in practice to prosecute a woman for adultery or fornication based on her pregnancy alone, while the father could deny all connection.[25] The Women's Protection Act 2006 partially reformed this by requiring that zina cases be prosecuted under the Penal Code rather than Hudood alone. However, the fundamental asymmetry remains: the visible biological evidence of a sexual act, a pregnant woman is entirely borne by the mother. The father remains invisible until he chooses otherwise.

CONSTITUTIONAL FRAMEWORK AND ITS GAPS

Fundamental Rights and Their Promise

The Constitution of Pakistan 1973 contains a robust bill of rights. Article 9 guarantees security of person. Article 14 guarantees dignity. Article 25 provides for equality before law and prohibits discrimination on the basis of birth.[26] Article 35 explicitly mandates the state to protect marriage, family, mother, and child. Article 38 imposes obligations to secure the social and economic wellbeing of citizens regardless of class or status.

On their face, these provisions should extend to illegitimate children. A child's right to dignity under Article 14 should not depend on its parents' marital status. The prohibition of birth-based discrimination in Article 25 should logically preclude a regime that treats children differently based solely on whether their parents were married.[27] The mandate to protect the child in Article 35 contains no caveat for legitimacy.

The Judicial Avoidance of Constitutional Claims

Despite these textual commitments, Pakistani courts have been reluctant to apply constitutional rights jurisprudence to expand the civil law rights of illegitimate children. The dominant judicial approach has been to defer to Islamic personal law, treating it as a constitutional requirement under Articles 2-A and 227.[28] This approach suffers from a fundamental flaw: it treats a specific school's jurisprudential position, Hanafi denial of *nasab* for *walad-ul-zina*, as if it were the only possible Islamic position, and treats classical doctrine as constitutionally mandated rather than constitutionally optional.

Article 25 and the Discrimination Problem

The Supreme Court of Pakistan has held, in various contexts, that Article 25's equality guarantee is not absolute and permits classification where it is reasonable and not arbitrary.[29] However, the classification of children by their parents' marital status for the purpose of denying basic maintenance is not reasonable: it penalises the child for conduct entirely outside its control, and it serves no legitimate state interest beyond reinforcing social stigma. A child-rights-centred reading of Article 25, consistent with the Supreme Court's

welfare jurisprudence in *Government of Pakistan v Farishta* PLD 1981 SC 120, would prohibit this discrimination.

INTERNATIONAL OBLIGATIONS: UNCRC AND ITS DOMESTIC NEGLECT

Pakistan's UNCRC Commitment

Pakistan ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1990, with reservations limited to provisions inconsistent with Islamic law.[30] The UNCRC is unequivocal: Article 2 prohibits discrimination based on birth status; Article 7 provides the right to know one's parents and be cared for by them; Article 18 imposes responsibility on states to ensure both parents bear responsibility for child-rearing; Article 27 guarantees every child's right to an adequate standard of living.

The Reporting Gap

In its periodic reports to the UN Committee on the Rights of the Child, Pakistan has consistently failed to address the specific situation of children born outside marriage.[31] The Committee, in its Concluding Observations on Pakistan's Fifth Periodic Report (CRC/C/PAK/CO/5, 2016), explicitly raised concerns about discriminatory treatment of children born outside wedlock and the absence of effective birth registration mechanisms for such children.

Monist Obligations and Domestic Courts

Pakistan operates on a dualist system; international treaties do not automatically become domestic law. However, the Supreme Court has, in various decisions, held that international human rights obligations are relevant to the interpretation of fundamental rights, and that domestic law should, where possible, be read consistently with Pakistan's treaty commitments.[32] This principle of treaty-consistent interpretation has not been systematically applied to the rights of illegitimate children.

JUDICIAL TRENDS: COURTS BETWEEN COMPASSION AND CONSERVATISM

Cases of Judicial Innovation

There is a thin but growing line of judicial decisions in Pakistan that have attempted to extend protection to children born outside marriage using the welfare principle, the general jurisdiction of guardianship courts, and expansive readings of maintenance provisions.[33] Some Family Court judges have ordered interim maintenance for children of uncertain parentage where a biological connection was sufficiently established. In *Mst. Fareeha Idrees v Muhammad Idrees* 2018 YLR 892 (Lahore), the Lahore High Court signalled openness to welfare-based extensions of maintenance jurisdiction in ambiguous parentage cases.

The Conservative Mainstream

The dominant judicial position remains that a child born outside *nikah* has no established legal relationship with the biological father, and that courts have no authority to create such a relationship by compulsion.[34] This position reflects a genuine jurisprudential commitment to the classical *nasab* doctrine, as affirmed in *Allah Rakha v Federation of Pakistan* PLD 2000 FSC 1, but it also reflects a broader judicial conservatism about disturbing settled personal law in the absence of legislative mandate.

Foundlings and State Abandonment

A particularly extreme case is that of foundlings, abandoned children with no identifiable parents at all. Pakistani law has no statute governing foundlings' citizenship, welfare, or guardianship in a comprehensive manner.[35] The Edhi Foundation and similar civil society organisations have filled this gap through their own institutional structures. The state has effectively outsourced its obligations to NGOs, which have no enforcement power and limited resources. A foundling has, in the law's eyes, no parents and no rights derived from parentage.

COMPARATIVE PERSPECTIVE: MUSLIM JURISDICTIONS THAT HAVE REFORMED

Tunisia

Tunisia, operating within a Maliki-influenced legal tradition, enacted the Code of Personal Status in 1956 and has progressively extended it. Tunisian courts have used DNA evidence to establish biological paternity for maintenance purposes even outside marriage, on the reasoning that the welfare of the child is a paramount Islamic principle (*maslaha mursala*) that can override classical jurisprudential positions.[36] This is not secularism; it is a different Islamic jurisprudential conclusion, one that this paper argues is equally available to Pakistani courts.

Morocco

Morocco's Moudawwana reforms of 2004 significantly strengthened children's rights, including provisions for recognition of paternal responsibility in ambiguous union cases.[37] The Moroccan model demonstrates that Islamic jurisprudence is not monolithic in this area and that reform is possible within a Muslim constitutional framework without abandoning the principles of *sharia*.

Indonesia

The Constitutional Court of Indonesia issued a landmark ruling in 2012 (Decision No. 46/PUU-VIII/2010) holding that children born outside marriage have legal rights against their biological fathers, including maintenance.[38] The court used constitutional welfare principles and biological connection as the basis for this ruling, explicitly departing from classical Islamic *nasab* doctrine. Indonesia is the world's largest Muslim-majority country, and this ruling demonstrates that Islamic constitutionalism does not require the denial of children's basic rights.

The Pakistani Contrast

Pakistan stands in stark contrast to these jurisdictions. While Tunisia, Morocco, and Indonesia have each used Islamic jurisprudential tools; *maslaha, istislah*, welfare principles, to move toward greater child protection, Pakistani law has remained static.[39] The Islamisation programme of the 1980s entrenched classical Hanafi positions in ways that have made reform politically difficult, even where that reform would be more consistent with broader Quranic principles of justice (*adl*) and harm prevention (*darar*).

THE ZINA ORDINANCE: HOW CRIMINALISING THE MOTHER FREED THE FATHER

The Offence of Zina (Enforcement of Hudood) Ordinance 1979 occupies a singular place in the history of Pakistan's treatment of non-marital children.[40] By criminalising extra-marital sexual intercourse and making pregnancy evidence of the offence, the Ordinance created a legal environment in which women who had been raped, deceived, or coerced faced criminal prosecution for the resulting pregnancy, while the men

involved could deny all connection. Jahangir and Jilani documented extensively how this framework functioned in practice to protect male impunity.

The practical consequence for illegitimate children was devastating. Mothers who sought legal recourse, including seeking maintenance for their children, risked being charged under the zina provisions. This chilling effect silenced women and protected men.[41] The Women's Protection Act 2006 amended the evidentiary framework, but the Hudood Ordinances themselves remain on the books. The structural dynamic they created, in which a woman's sexuality is criminalised and a man's is privately enjoyed, has not been dismantled.

The point here is not merely historical. It is analytical: the legal architecture governing illegitimate children in Pakistan cannot be understood without understanding how the criminalisation of non-marital sexuality falls almost entirely on women. The father's escape from responsibility is not accidental. It is built into the normative framework. [42]

ISLAMIC INSTITUTIONS AND THE RIGHTS OF NON-MARITAL CHILDREN: CONCUBINAGE AND MUT'A MARRIAGE

A frequently neglected dimension of this debate is that classical Islamic jurisprudence itself recognised alternative relational structures, specifically, the institution of concubinage (*milk al-yamin*) and, within Shia jurisprudence, temporary marriage (*nikah al-mut'a*), which generated specific and enforceable obligations toward children born of those unions. A rigorous engagement with these institutions, their historical purposes, their classical protections, and their potential as a jurisprudential foundation for contemporary child-rights reform, is essential to this paper's argument that reform is not only permissible but Islamically mandated.

The Institution of Milk al-Yamin (Concubinage) in Classical Fiqh

Classical Islamic law, as codified across all four Sunni schools and in Shia jurisprudence, recognised the institution of *milk al-yamin*, sexual relations between a man and a woman he owns as a slave, arising from the right of ownership (*milk*).[43] This institution, though historically contingent on the existence of lawful slavery, contained a set of rigorous child-protective rules that are directly instructive for contemporary reform.

Under *milk al-yamin*, if a slave woman (*umm walad*) bore a child to her master, that child was deemed *free* and *legitimate* from birth, automatically and irrebuttable attributed to the father.[44] The child inherited from the father as a full heir. The mother herself acquired the status of *umm walad*, a mother of the master's child, which prohibited her sale, entitled her to maintenance for her lifetime, and guaranteed her freedom upon the master's death. Classical jurists across the Hanafi, Maliki, Shafi'i, and Hanbali schools were unanimous that the *umm walad*'s child had full *nasab* from the father, indistinguishable in law from the child of a lawful wife.

The jurisprudential logic underlying these protections is of paramount importance. Ibn Qudama in *al-Mughni* explains that the prohibition on denying the *umm walad*'s child is rooted in the master's established physical access to the mother, precisely the element of *imkan al-wati* (possibility of intercourse) that grounds the presumption of paternity in marriage.[45] The classical jurists were not protecting 'legitimate' unions for their own sake; they were protecting children who could be attributed to an identifiable man based on established physical proximity and biological probability.

This logic is directly applicable to the modern problem of illegitimate children. If the classical jurists granted full *nasab* and inheritance to children born of concubinage, an institution that was not a marriage in any formal sense, based on established biological connection and the father's culpable physical access to the mother, then the denial of all legal status to children whose biological paternity can be established by DNA evidence lacks a coherent jurisprudential foundation.[46] DNA evidence provides a far more reliable confirmation of biological paternity than the classical jurists possessed, yet classical law granted more protection to children in its absence than Pakistani law does in its presence.

It must be stated clearly that the abolition of slavery has rendered *milk al-yamin* inapplicable as a live institution. Contemporary Islamic scholars, including the International Islamic Fiqh Academy, are unanimous that slavery cannot be revived.[47] The argument here is not to revive concubinage but to extract the *jurisprudential principle* it embodies: that Islamic law has always been capable of protecting children born outside formal marriage when biological connection and physical proximity to an identifiable father can be established. That principle not the institution, is what contemporary reform can and should activate.

Nikah al-Mut'a: Temporary Marriage and Child Rights in Shia Jurisprudence

Nikah al-mut'a, temporary or time-limited marriage, is a contested institution within Islamic jurisprudence. It is recognised as lawful in Shia Islam (Ja'fari school) and was practised in the early Islamic period before being prohibited by the Caliph Umar.[48] Sunni jurisprudence regards it as definitively abrogated; Shia jurisprudence regards it as valid, subject to specific conditions. This paper does not take a position on the theological dispute regarding *mut'a*'s permissibility. It examines the institution's child-protective framework as a comparative jurisprudential resource.

Under Ja'fari jurisprudence, *nikah al-mut'a* is a formal contract with a defined term, a specified *mahr* (dower), and specific conditions.[49] Crucially for this paper's purposes: children born of a *mut'a* union have full *nasab* from the father. They inherit from him. They are entitled to maintenance (*nafaqa*) from him. The father cannot deny *nasab* to a child born of a *mut'a* union, unless he invokes *li'an* (formal oath of denial), which itself carries serious legal consequences. The *mut'a* child's rights are, in Shia jurisprudence, legally indistinguishable from those of a child born of permanent marriage.

The child-protective logic of *mut'a* jurisprudence that the child's rights cannot be sacrificed on the altar of the relationship's temporariness or informality is a principle with substantial relevance for Pakistani law reform. The key insight is this: Shia jurisprudence has developed a detailed doctrinal framework for protecting children born of unions that Sunni jurisprudence might classify as irregular or temporary.[50] This demonstrates that within the broad tradition of Islamic law, it is entirely possible to protect children born of non-standard unions without abandoning the framework of *nasab* and Islamic family law.

Furthermore, the *mut'a* institution raises important questions about currently widespread informal unions in Pakistan that fall outside the formal *nikah* framework but in which both parties may have subjectively understood themselves to be in a binding relationship.[51] Unregistered *nikah* ceremonies, *nikah nama* contracts not submitted to Union Councils, and oral *nikah* agreements are common in Pakistan, particularly among the poor and rural communities. Children of these unions face the same legal invisibility as children of openly non-marital relationships, despite having been born into what the parents considered a valid religious marriage. The *mut'a* jurisprudential framework suggests that the child's rights should not be contingent on state registration of the parents' union.

Jurisprudential Synthesis: What Classical Institutions Tell Us About Contemporary Reform

Reading the institutions of *milk al-yamin* and *nikah al-mut'a* together with the *walad-ul-shubha* doctrine and the *maslaha mursala* principle yields a coherent Islamic jurisprudential position on illegitimate children:[52] Islamic law has never been uniformly committed to denying all protection to children born outside formal marriage. The protection of children is, across all schools, a higher-order obligation, a *darura* (necessity) that can override secondary doctrinal positions.

The Maliki school, it bears noting, takes a markedly different position from the Hanafi school on the question of biological paternity. Imam Malik held that a child born to a woman without a husband, after a specified period from any prior marriage, could be attributed to a man who acknowledged paternity without requiring the formal conditions of *iqrar* that Hanafi doctrine imposes.[53] This Maliki position is closer to the modern DNA-based approach than the Hanafi position is. Pakistan's exclusive adherence to Hanafi jurisprudence is a jurisprudential choice, not a constitutional compulsion.

The broader principle that emerges from this survey of classical Islamic institutions is that the Islamic legal tradition contains, within itself, the resources necessary to protect children born outside formal marriage. The *umm walad*'s child was protected because classical jurists understood that children cannot be held responsible for the circumstances of their conception. The *mut'a* child's rights were protected because Shia jurisprudence understood that the temporality of a union does not diminish the child's humanity or legal personhood. These insights available within the Islamic tradition provide the jurisprudential foundation for the reforms proposed in Part XI of this paper.

PROPOSED REFORMS: CLOSING THE ESCAPE ROUTES

The following legislative and institutional reforms are proposed, grounded in constitutional law, Islamic jurisprudence, and international best practice. These proposals are not a rejection of Islamic law; they are an assertion that Islamic law, properly understood through its core principles of *adl* (justice), *maslaha* (public welfare), and *la darar wa la dirar* (no harm shall be inflicted), requires the protection of children regardless of the circumstances of their birth. [54]

Civil Paternity Recognition Act

Pakistan should enact a Civil Paternity Recognition Act that creates a judicial procedure for establishing biological paternity through DNA evidence, independent of the *nasab* determination under personal law.[55] This Act would: (a) allow a mother or guardian to file an application in Family Court seeking a declaration of biological paternity; (b) require the court to order DNA testing where there is prima facie evidence of a biological relationship; (c) attach a maintenance obligation to a declaration of biological paternity; and (d) preserve a distinction between civil maintenance obligations and the personal law of *nasab*, so as not to require courts to modify inherited doctrine on lineage. This approach follows the Indonesian Constitutional Court model and is consistent with the *umm walad*'s child's automatic right to paternal acknowledgement in classical Islamic law.

Recognition of Informally Contracted Unions and Their Children

Drawing on the jurisprudential insights of *nikah al-mut'a* and the *walad-ul-shubha* doctrine, the legislature should enact a provision recognising that children born of informally contracted or unregistered *nikah* ceremonies, including those conducted without submission to a Union Council, have the same right to maintenance and registration as children of formally registered marriages.[56] The state's administrative failure to capture the registration should not become the child's legal disability. This reform would protect

the millions of children born of oral or ceremonially valid but administratively unregistered marriages that are common in rural Pakistan.

Mandatory Birth Registration Without Stigma

The birth registration framework should be reformed to: (a) allow registration of a child under the mother's name without requiring a paternal name; (b) issue a standard birth certificate that does not mark the child's status as 'illegitimate' or equivalent; (c) allow subsequent amendment if paternity is later established; and (d) ensure that absence of a paternal name does not affect access to schooling, CNIC, passports, or other civic documents.[57] The classical *umm walad* precedent is instructive: the child's legal personhood was not contingent on administrative formalities.

Maintenance Enforcement Mechanism

The West Pakistan Family Courts Act should be amended to create an explicit maintenance jurisdiction for children born outside marriage, where biological paternity has been established by DNA or voluntary acknowledgement.[58] This maintenance obligation should: (a) run until the child reaches majority or completes education; (b) be enforceable through the same attachment and arrest mechanisms applicable to matrimonial maintenance; and (c) be subject to the court's welfare discretion on quantum. The jurisprudential basis for this is the classical rule uniform across all schools that a father must maintain his child whether the marriage continues or has dissolved, from which it is a small but principled step to extend the obligation to established biological paternity.

Protection for Mothers Asserting Children's Rights

A specific statutory protection should be enacted, prohibiting the use of zina-related provisions to intimidate or prosecute women who seek maintenance or paternity recognition for their children.[59] This protection already exists implicitly in the Women's Protection Act 2006, but it needs to be made explicit and enforced through judicial guidelines. The classical protection of the *umm walad* who could not be punished for the relationship that produced her child provides an Islamic precedent for protecting mothers who exercise their children's legal rights.

State Welfare Fund for Foundlings and Unacknowledged Children

A Child Welfare Fund should be established by statute, administered by a Child Protection Authority with provincial branches, to provide: (a) registration, identification, and CNIC/B-form issuance for foundlings; (b) monthly support payments for children where no maintenance can be recovered from biological parents; (c) institutional placement and adoption regulation for abandoned children; and (d) psychosocial and legal support for mothers of illegitimate children.[60] This fund should be financed from the general budget and from levies on family court enforcement proceedings. The Quranic principle of community responsibility for the vulnerable — the basis of *zakat* and *waqf* — provides the Islamic justification for collective state financing of child welfare where individual fathers are unidentified or unaccountable.

The Islamic Justification for These Reforms in Contemporary Context

To those who argue that Islamic law prohibits these reforms, this paper's answer, drawn from the analysis of *milk al-yamin* and *nikah al-mut'a* in Part X is that Islamic law has never been uniformly committed to denying all protection to children born outside formal marriage.[61] The historical protection granted to the *umm walad*'s child was more comprehensive than anything Pakistani law currently offers to children of

established biological paternity. The protection of children is a *darura*, a necessity in Islamic law that overrides secondary doctrinal positions on *nasab*.

If it was Islamically permissible to grant full *nasab* and inheritance to a child born of a concubinage relationship that was not a marriage, based on the father's established physical access to the mother, then it is Islamically permissible indeed, required to grant at minimum maintenance rights to a child whose biological paternity can be confirmed by DNA evidence that is vastly more reliable than anything available to classical jurists.[62] The refusal to do so is not Islamic conservatism. It is an Islamic inconsistency, rooted in political convenience rather than jurisprudential integrity.

The principle of *qiyas* (analogical reasoning) one of the four primary sources of Islamic law supports this conclusion.[63] If the ratio of *umm walad*'s child's protection is 'established biological connection to an identifiable father,' then the same protection should extend, by analogy, to any child whose biological connection to an identifiable father can be established with even greater certainty. The absence of a formal marriage is not the jurisprudential ratio of the *walad-ul-zina* rule's denial of *nasab*; the ratio is the impossibility of reliable attribution. DNA evidence eliminates that impossibility. The classical rule's rationale therefore, no longer applies.

CONCLUSION

The child born outside of marriage in Pakistan enters the world burdened with a legal status it did not choose, carrying consequences it did not deserve, and facing a state that has, through a combination of doctrinal silence, institutional indifference, and structural asymmetry, left it without protection.[64] The biological father, who bears equal moral responsibility for the child's existence, is systematically enabled to escape all legal responsibility through a framework that requires his voluntary acknowledgement as the price of the child's rights.

This is not a requirement of Islamic law. It is a choice made by legislators who have not legislated, by judges who have deferred rather than interpreted, and by institutions that have treated the silence of personal law as permission for abandonment.[65] The Quran is explicit that no person shall bear the burden of another's sin (Quran 6:164; 17:15; 35:18). And yet Pakistani law places the full burden of paternal sin upon the child.

This paper has demonstrated that within the Islamic legal tradition itself, in the institution of *milk al-yamin* and the doctrine of *nikah al-mut'a*, there exist jurisprudential resources for protecting children born of non-standard unions. The *umm walad*'s child received more legal protection in seventh-century Islamic law than a child of established biological paternity receives in twenty-first-century Pakistan.[66] This is not a defence of Islamic law; it is an indictment of the selective and politically convenient application of Islamic law that has characterised Pakistan's treatment of illegitimate children.

The reforms proposed in this paper do not require the abandonment of Islamic principles. They require the full application of Islamic principles of justice (*adl*), welfare (*maslaha*), harm prevention (*darar*), and analogical reasoning (*qiyas*) to a group that classical jurists did not envision living in a constitutional state with DNA laboratories, civil registries, and enforceable family courts.[67] The tools exist. What is lacking is the political will and the jurisprudential courage to use them.

A legal system that protects only the children whose fathers choose to be accountable is not a legal system worthy of the name. Pakistan can and, under its own Constitution and its own faith, must do better for the children who are born not into sin, but into a legal structure that treats them as if they were.

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