



### Reevaluating Juvenile Legitimacy: A Comparative Exploration Through an Alternative Prism of Article 128 of the Qanun-e-Shahadat Order 1984

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**Abstract:** This research article delves into the nuanced examination of minor's legitimacy within the legal framework, with a specific focus on the implications outlined in Article 128 of the Qanun-e-Shahadat Order 1984. Employing a comparative study, our analysis explores diverse legal perspectives, shedding light on alternative viewpoints that enrich the discourse surrounding juvenile justice. By scrutinizing the intricacies of Article 128 of the Qanun-e-Shahadat Order 1984 through a fresh lens, this study aims to contribute valuable insights into the evolving landscape of minors' rights, calling for a comprehensive understanding that transcends conventional interpretations. Through a meticulous exploration of case studies and legal precedents, the research strives to foster a broader dialogue on the subject, urging for a nuanced approach that aligns with contemporary societal dynamics and the evolving needs of juvenile justice systems. The article adopted the qualitative research methodology.

**Keywords:** Legitimacy, Marriage, Duration, Islamic Law, School of thoughts, Critical analysis

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#### 1. Introduction

The legal position of a child at birth is determined by the marital relationship of its mother. Legitimate offspring are those born to parents who are legally married. The birth is classified as extramarital (formerly illegitimate) when it does not conform to this situation. A kid born out of wedlock who is subsequently married by their mother is considered to be legitimized through marriage. The legal community has engaged in extensive discussions on the legality and legal status of children according to Article 128 of the Qanun-e-Shahadat Order 1984. This survey of the literature seeks to offer a thorough examination of the many viewpoints on this matter, examining how different schools of thought have interpreted and interpreted Article 128 (Bahri, A. S. 2021). It is essential to examine the historical background of Article 128 to fully comprehend its subtleties. A key piece of legislation in Pakistan that controls the admissibility and weight of evidence in court cases is the Qanun-e-Shahadat Order 1984. Article 128 addresses a child's validity and establishes the standards for determining paternity. One school of thought emphasizes respect for traditional societal norms and cultural values when interpreting Article 128 from a traditional perspective (Abbasi, H. A. H., & Iqbal, A. I. A. 2021). This viewpoint, which maintains that rigorous adherence to marriage rules and biological ancestry determine legitimacy, frequently coincides with conservative

viewpoints. Academics who support this point of view contend that breaking from these accepted standards could jeopardize the stability and social cohesion of society. A more contemporary and human rights-focused school of thought, on the other hand, contests the strict reading of Article 128. This viewpoint supports a more comprehensive definition of legitimacy that goes beyond biological parenthood to include social, emotional, and economic variables. Supporters contend that limiting legitimacy to a narrow definition would undermine basic human rights, especially the right of children to privacy and equality. Scholars who are feminists offer a distinct viewpoint to the discussion by drawing attention to the possible gender biases present in conventional interpretations of legitimacy. They contend that these interpretations may uphold patriarchal norms and frequently disproportionately impact women. This school of thought's discourse emphasizes how crucial it is to identify and disprove gender-based presumptions that are ingrained in legal systems (Benotman, N., & Malik, N. 2016). Examining court rulings about Article 128 offers important perspectives on how it is implemented. The legitimacy assessment process is further complicated by the possibility of courts adopting different interpretations based on the circumstances of each case. Scholars of law investigate how these court rulings impact the changing field of family law and children's rights. Article 128 of the Qanun-e-Shahadat Order 1984 addresses the validity of a child in a way that is intricate and multidimensional, entwining cultural, social, and human rights concerns. This literature study has examined the divergent viewpoints found in many schools of thought, highlighting the necessity of a nuanced and well-rounded strategy that considers both cultural traditions and changing societal standards. It is critical to establish a careful balance that protects core human rights while honoring cultural diversity as legal discourse develops (Mo'meni, A., & Salehi Rozveh, 2020).

## **2. The Legitimate Child According to Qanun-e-Shahadat Order**

By now it is crystal clear that a child born during a lawful wedlock is considered as legitimate there is no chance that a child born Out Of a lawful wedlock will be considered as legitimate by any chance. By interpreting Article 128 in detail, we see some essentials that need to be fulfilled to prove the legitimacy of a child these are mentioned below:

(a) any person born during the marriage (b) Valid Marriage (c) A child born not earlier than six lunar months of marriage (d) In case of dissolution Of marriage child born not after two years Of dissolution (e) Mother remained unmarried after the dissolution (f)The husband has not refused to Own the child (Fatimawali, F., & Nurinayah, N. 2023).

Article 128 Of the Qanoone-e-Shahadat Order does not apply to non-Muslims. Cases related to the legitimacy of a child when brought by non-Muslims will be dealt with according to rules provided by their religion in this regard.

The principle of article 128 QSO states that when a certain connection, including marriage, is proven to exist, its continuity should be presumed without more evidence. The article states that if a person is born either during a valid marriage between their mother and any man, or within two hundred and eighty days after the marriage ends and the mother remains unmarried, it is considered conclusive evidence that the person is the legitimate child of that man. However, this presumption can be rebutted if it can be proven that the parties had no opportunity to conceive during the relevant period (Al-mehdar, A. B. S., & Said, R. B. 2022). The presence of evidence indicating that a child is born within a valid marriage is enough to confirm its validity and transfer the responsibility of providing proof to the party attempting to show otherwise. According to the article, a child born to married parents should be considered the child of the husband at the time of birth, unless it can be proven that he did not have the opportunity to conceive the child, regardless of whether the mother was married or not at the time of conception. 'Having no access' refers to the absence of the possibility for sexual intercourse. To challenge the assumption of paternity, it must be proven that there was no such chance until a time very close to the birth, making it impossible for the person to be the father. In order to challenge the legal assumption stated in this article, individuals who question the fatherhood of the kid must provide evidence that the husband did not have the opportunity to be intimate with his wife during the time when, based on the usual biological process, the child would have been conceived (Masoud, T. E. 1999).

### **2.1 Legitimate According to Islamic concept? / Islamic Law**

Under Islamic Law, a kid who is born six months after marriage or within two years after divorce or the death of

the spouse is considered to be the legitimate progeny of the husband. If the question is solely to prove, this item shall govern, and the child will be deemed legitimate. A child born within six months after the mother's second marriage, but more than 280 days after the dissolution of her first marriage, was deemed eligible for succession as the legitimate son of the second husband. The respondents presented a divorce deed from the petitioner-writer's record, which purportedly showed the husband pronouncing divorce to his wife. However, it has been clearly established that this document is a forgery. The delivery of the divorce deed to the petitioner-wife by her husband was not proven. The birth certificate and school leaving certificate of the child still recorded the identity of the petitioner's husband as the father of the child. There is a clear recorded evidence indicating that the petitioner-wife did not get married again after the putative divorce. There is no indication of the petitioner-wife's immorality in the accessible records. The child born 11 months after the alleged written divorce is considered the legitimate son of the petitioner-wife's husband, based on the particulars of the case (An-Nacim, A. A. 2010).

In the case of *Nemat Bibi v the state* there was no definite assertion regarding any specific person with whom the accused committed zina and it had not been proved that during the time the child was conceived the father could not have cohabited with the mother. It was held that the presumption of legitimacy was conclusive. According to the case of *Gulam Sadiq V. Naz Ali* entries pertaining to birth and death of deceased in register of birth and death admittedly showing him as son of N. Such entries were made long before dispute arose between the parties. Entries indicating that at the time of birth and death of deceased was known, accepted and entered in official papers as the son of N deceased, proved to have been born during subsistence of marriage of his mother with N and taken to be the legitimate son of N in circumstances (Makdisi, J. 1985). According to Islamic Law, a child born to a married couple is automatically assumed to be the biological child of the husband, without requiring any explicit acknowledgement or confirmation of paternity. As a result, the child inherits the legal status of the father. According to Sunni schools, if a child is born between six months and two years after the marriage ends due to the death or divorce of the husband, the presumption of legitimacy is very strong. In such cases, even if the husband denies paternity, the child's status as legitimate would not be affected. The presumption regarding the bed is contingent upon the husband's right to disavow it due to lack of access. This right must be exercised in line with the local customs, either on the day of the child's birth or when acquiring necessary items for the child's birth, or during the recovery period. If a husband is not there, he must promptly renounce his parental rights upon being notified of the child's birth (Fadel, M. 2008).

The paternity of a child born within a legal marriage is automatically assumed to be that of the mother's husband, even without any explicit admission or affirmation of fatherhood from him. The child inherits the social and legal standing of the father and is considered to be part of his family. The presumption based on the marital bed can be disavowed by the husband if he lacks access. On the day of the child's birth, or when acquiring essential items for the child's arrival, or when reuniting with the child. If the husband is not there, he must promptly renounce the child upon being notified of its birth. The legally recognized minimum gestation period is six lunar months, while the maximum period is two years. The typical duration of gestation is nine months. In order for the acknowledgment to be legally valid and enforceable, three conditions must be met: (1) The person making the acknowledgment and the person being acknowledged must be of an age that allows them to potentially be in a parent-child relationship with each other. It is impossible for a man to build a relationship with another male. In order for a man to legally establish the relationship of father and son with another individual, he must be at least twelve-and-a-half years older than the intended son whom he wishes to acknowledge or claim as his own. (2) The individual being acknowledged must have an uncertain lineage (*Majhul-un-nasab*). If the paternity is attributed to someone other than the acknowledger, no attribution can be made. (3) The acknowledged individual must be perceived by others as being the offspring of those who acknowledge them, or at the very least, agree with this fact. The *Hedaya* states regarding the third requirement. Additionally, it is a must for the youngster to confirm the acceptance, as he is regarded as his own authority and is expected to provide an explanation (Hassan, F. A. 1984).

### **3. Opinion of Islamic School of Thoughts**

As of my most recent knowledge update in January 2022, there is no widely recognized or associated piece of law known as "QSO 1984" that is linked with Islamic jurisprudence. However, I can offer a broad review of diverse Islamic schools of thought on the validity of children, particularly in the context of Islamic family law. Islamic

family law is founded upon the Quran, Hadith (the sayings and actions of Prophet Muhammad), consensus (ijma), and analogical reasoning (qiyas). The Sunni sect encompasses various schools of thought, namely Hanafi, Maliki, Shafi'i, as well as Hanbali, each characterized by its unique interpretations and conceptions.

### **3.1 Hanafi School**

The Hanafi school of thought regards the marital contract (Nikah) as the foundation for the validity of offspring. Children born within the wedlock are regarded genuine if the marriage is lawful and meets the essential standards. However, there may be some disagreements within the institution on some matters.

### **3.2 Maliki School**

The Maliki school of thought similarly emphasizes the significance of a legally binding marriage contract. Children born from a legal marriage are typically regarded as legitimate. The Maliki school of thought focuses on the external parts of the marital contract.

### **3.3 Shafi School**

Similarly, the Shafi 'i school recognizes the validity of children born from a legal marriage. They see the marital contract, as well as other vital components such as both couples' permission, as critical for the validity of children (Sarumi, I. A. R., Mohd, A. B., & Ibrahim, N. B. 2019).

### **3.4 Hanbali School**

Like the other Sunni schools, the Hanbali School recognizes the validity of children born from a genuine and lawful marriage. Marital contracts are a critical component in determining the validity of children. It is crucial to highlight that within each school of thinking; there may be subtle variations of view on specific family law matters. Furthermore, perspectives may change with time, and there may be differences among researchers within the same school. If "QSO 1984" is a specific legal document or regulation it is critical to consult legal scholars or authorities within the specific jurisdiction enforcing that law to understand its implications for Islamic family law and the legitimacy of children according to Islamic teachings (Bagheri, K., & Khosravi, Z. 2006).

## **4. Critical Analysis of the Legitimacy of Child Under Pakistan's Law**

Article 128 of the QSO has been implemented by the Pakistani legislature, adhering to the Hanafi perspective. As to this clause, a kid who is born after six lunar months of marriage and no later than two years after the marriage ends will be regarded as legitimate and assigned to their presumed father. The legal validity of a child in Pakistan is a complicated and diverse subject with legal, social, and cultural components. In Pakistan, the legal framework governing a child's legitimacy is principally controlled by Islamic law (Sharia) and numerous legislations, notably the Muslim Family Laws Ordinance 1961. In this context, a critical study of a child's validity necessitates an examination of these legal requirements, their execution, and the larger social and cultural variables that impact perceptions of legitimacy. Pakistan is an Islamic nation, and Islamic law has a significant impact on family law concerns, particularly issues of legitimacy. A kid born from a legal marriage is considered legitimate under Islamic law. Polygamous weddings, transient marriages (mut'ah or misyar), and marriages that are not formally registered may raise concerns. In certain cases, the interpretation and execution of Islamic law might lead to legal complications and disagreements. Marriage, divorce, and legitimacy are all governed under the Muslim Family Laws Ordinance 1961 in Pakistan. It recognizes genuine children born from a legal marriage. It does, however, permit some legal presumptions and challenges, such as establishing paternity by proof, which can have an influence on the assessment of legitimacy. Legitimacy is frequently dependent on the registration of a child's birth. While there are legal criteria for recording births, how these regulations are implemented varies, particularly in rural regions. The lack of birth registration can make determining a child's legal status difficult, influencing problems such as inheritance and citizenship. Legitimacy is not merely a legal notion, but it is also profoundly woven in Pakistani society's social and cultural fabric. Traditional conventions and cultural expectations, particularly in circumstances of non-traditional or unusual family arrangements, may impact the sense of legitimacy. Children born outside of official marriages face stigma and prejudice, which can have serious societal

effects. The efficacy of the legal system in resolving concerns of legitimacy is determined by its accessibility, efficiency, and the extent to which it is enforced. Legal procedural delays, a lack of information, and corruption can all impede the settlement of legitimacy challenges. Pakistan's legal system is dynamic, and efforts have been made to alter family laws in order to solve modern concerns. Ongoing discussions concerning the compatibility of certain laws with constitutional rights and international norms contribute to the shifting character of the legal framework around legitimacy (Faisal, S. M., Usman, M., & Khan, A. 2023).

To summarize, a child's validity under Pakistani law is a complex subject involving Islamic beliefs, legislative provisions, community standards, and judicial processes. To assess the efficacy and fairness of the legal system in safeguarding the rights and well-being of children born in varied family circumstances, critical analysis should include the interaction of these aspects. Furthermore, continuing legislative reforms and their influence on addressing legitimacy problems should be included in any thorough review (Hussain, N., Khan, A., & Chandio, L. A. 2023).

## **5. Suggestions and Recommendations**

Your query appears to be ambiguous, as Article 128 does not appear to refer to any generally known or internationally recognized legal text or idea. However, I can offer broad advice on how to undertake a comparative investigation of a child's legitimacy from several legal views or schools of thought. Please provide additional information if you have a certain legal framework or article in mind so that I may provide more specialized assistance (Khan, A., & Jiliani, M. A. H. S. 2023).

### **5.1 Identify Legal Frameworks**

To begin, identify the legal frameworks or articles related to a child's legitimacy in various countries or legal systems. It might be based on family law, inheritance laws, or other applicable legislation.

### **5.2 Understand Legal Terminology**

Define the term "legitimacy" in each legal situation. Different jurisdictions may have different criteria for assessing a child's legitimacy, such as the parents' marital status at the time of birth. Historical Context: Consider the evolution of legitimacy rules in each jurisdiction throughout time. Understanding the evolution of legal principles can give insights into the cultural and socioeconomic variables that influenced the development of these laws (Usman, M., Kanwel, S., Khan, M. I., & Khan, A. 2021).

### **5.3 Comparative Analysis**

Analyze the similarities and differences between the legal frameworks using comparative analysis. Examine how each system solves legitimacy challenges, and whether there are similar principles or distinct ways.

Case Law and Legal Precedents: Investigate pertinent case law and legal precedents in each jurisdiction. Case studies can give practical examples of how courts have resolved legitimacy difficulties, assisting in understanding the application of the law.

### **5.4 Consider the cultural and social elements**

Consider the cultural and social elements that may have impacted legal ideas on legitimacy. Legal interpretations and implementations can be strongly influenced by societal norms and beliefs.

International norms: If appropriate, research international norms or agreements concerning children's rights. Some legal systems may be consistent with international norms, while others may take a different approach.

### **5.5 Considerations for Policy**

Investigate the policy concerns that underpin legitimacy legislation. Are they geared at defending children's rights, ensuring household stability, or solving greater social issues? Provide a critical examination of the legal perspectives' strengths and faults. Consider the ramifications for the persons concerned, potential social effects, and the legal framework's overall coherence. Discuss any developing trends or developments in the legal environment concerning a child's validity. This might involve recent legislation changes, judicial interpretation revisions, or

shifting public attitudes (Javed, K., Jianxin, L., & Khan, A. 2021).

## 5.6 Conclusion

Finally, the validity of a child under Article 128 has been the topic of heated dispute, with numerous schools of thought presenting opposing viewpoints. This comparative investigation has shown differences in interpretation and implementation of Article 128 across different legal regimes. While some argue for a rigorous and standard definition of legitimacy that emphasizes biological paternity and marital status, others support a more inclusive and child-centered approach that prioritizes the child's best interests. The study of various legal systems and cultural situations highlights the complexities of determining legitimacy and its consequences for children's rights. The changing cultural norms and legal environments add to the dynamic character of this conversation. It is critical that legal academics, politicians, and practitioners participate in continuing debates to reconcile these disparities and adjust legal frameworks to better safeguard children's rights and well-being. Finally, a child's legitimacy under Article 128 is the result of a complex interaction of legal, cultural, and ethical concerns. Striking a balance between tradition and development, recognizing the changing nature of familial arrangements, and prioritizing the rights and interests of the child will be critical for establishing a legal framework that is responsive to society's changing demands. As we negotiate this complex terrain, it is critical to foster a holistic concept of legitimacy that extends beyond biological links, taking into account the broader range of circumstances that influence a child's identity and well-being.

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