

ADMISSIBILITY OF DNA AS A PROOF OF PATERNITY UNDER ISLAMIC LAW AND NIGERIAN LAW

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Abstract

This paper examined admissibility of DNA as a proof of paternity under Islamic law and Nigerian law. In order to achieve the aim and objectives of this research, the meaning of paternity, DNA and its nature were briefly discussed. The paper adopted a doctrinal method of research by conducting an in-depth analysis of primary and secondary sources of legal research. It specifically analysed some provisions of Nigeria Child's Rights Act, 2003 and Child's Rights Law of Lagos State of Nigeria, 2015 relating to the topic. The paper discussed the role of DNA testing in paternity determination and challenges that surround its use. It also examined various arguments advanced by scholars and legal experts to support or oppose the use of DNA testing for paternity verification. The paper found that DNA is a proof of paternity under Nigerian law. The writer's major finding is that DNA is not sufficient or conclusive legal proof to establish paternity of a child in Islamic law, rather, it can only be supplementary evidence which must be corroborated by other proofs. The paper recommended that Islamic scholars, jurists and religious authorities should engage in continuous dialogue and debates on the topic in the light of advancement in technology and changing social norms.

Keywords: paternity, DNA, admissibility, Islamic law legitimacy

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Introduction

Paternity determination holds a profound significance within the framework of Islamic law, serving as a cornerstone for matters of lineage, inheritance, and familial responsibilities. Islamic law does not only govern all aspects of life, but, has come to specifically safeguard some aspects of life among which is *Al-nasl* (lineage). The protection of progeny (*nasl*) is one of the five universal ends (*al-maqa-assid al-kuliyyah al-khams*) of Islamic law. Lineage is one paramount discussion under Islamic law and as such, Islamic law has laid down some fundamental rights and responsibilities of each member of the family and also prohibited illicit sexual relationship such as adultery or fornication (*zina*). Despite the principles, classical Islamic law (*fiqh*), with very limited exceptions, barred affiliating a child conceived through illicit intercourse to the child's biological father, even if his identity is known. In tracing a person's lineage, the establishment of paternity would come to play. There are different *hadiths*¹ of the Prophet that establish paternity and among the famous ones is that: 'The child should be attached to the (rightful owner of the) bed and the stone is for the one who commits illegal sexual intercourse.'² This *Hadith*, no doubt, links the paternity of a child to the husband even if he is not the biological father of the child. This is a major reason why Islam prohibits illicit sexual affairs and bearing a child out of wedlock.

Islamic jurisprudence traditionally relies on witnesses and paternal acknowledgment to establish paternity. The Qur'an and *Hadith* emphasise the significance of just and fair procedures in matters of familial relations.³ As science advances, notably DNA testing, has become prevalent tools for establishing biological relationship, a crucial discourse has emerged on its admissibility under Islamic law. The advent of DNA testing has introduced a new layer of complexity, prompting scholars and legal experts to reassess the compatibility of these scientific methods with Islamic principles. The introduction of DNA testing represents a paradigm shift in the way paternity can be determined. Like traditional methods that may be subjective or prone to error, DNA results may equally be accurate, almost accurate or erroneous due to so many factors. While DNA testing is widely recognized as a reliable scientific method for determining biological relationships, its acceptance as evidence in paternity cases under Islamic law can vary among different schools of thought and jurisprudence. This evolution in scientific methodology has sparked discussions on how Islamic law should adapt to these advancements while maintaining its core values. The emergence of DNA testing as a means for paternity verification has raised important questions about the continuing relevance of traditional methods, including the marriage paternity connection.

Under Islamic law, the admissibility of DNA as a proof of paternity is a topic that has been subject of debate, controversies and varying interpretations among schools and jurists. The paper seeks to discuss the meaning of paternity, DNA, its nature,

¹ Words and sayings of the Prophet Muhammad (May Peace of Allah be upon him)

² Narrated by Aisha (R.a) Transmitted by Al-Bukhari, Volume 8, Book 80, Number 757.

³ "Al-Qur'an Al-Kareem", 65:1, 2, 3, 4, 5, and 6. Also, "Al-Qur'an Al-Kareem" 4:2, 3, 4, 5, 6, 7, 8, 9 and 135.

modes and significance of establishing paternity under Islamic law. The paper takes a critical look at and examines the admissibility of DNA as a proof of paternity under Islamic law and Nigerian law. The study seeks to examine various arguments advanced by scholars, jurists and legal experts to either support or oppose the use of DNA testing for paternity verification. The study concludes with suggestions and necessary recommendations.

Meaning of Paternity

Various definitions or meanings have been ascribed to the word ‘paternity’ by different authors and legal experts. Oxford Advanced Learner’s Dictionary defines it as ‘the fact of being the father of a child’.⁴ Another dictionary defines it as ‘the quality or state of being a father: origin or descent from a father’.⁵ According to Black’s Law Dictionary, it is ‘the state or condition of being a father, especially, a biological one; fatherhood. For more clarity, it defines paternity suit as ‘a court proceeding to determine whether a person is the father of a child (especially one born out of wedlock), usually initiated by the mother in an effort to obtain child support’.⁶ According to a learned author, parentage is the relation of parents to their children, while paternity is the legal relation between father and child.⁷

From different definitions above, it is understood that paternity is a legal link between father and his child which is created by a valid marriage. This assists a child to safely trace his lineage to a particular father and establish his progeny. It has been observed that of all the logical possibilities of placement and of the pre-Islamic patterns of descent acquisition, Islam chooses what may be termed the “principle of legitimacy”, which, in the summary words of Rose Coser, “holds that every child shall have a father, and one father only whose fatherhood, once established, would be irrevocable. It has also been observed that by so doing, Islam probably meant to put an end to the Arabian practices that left the individual sometimes without any secure identity.”⁸

Modes of Establishing Child Paternity Under Islamic Law

Under the purview of Islamic law, the paternity of a child can be confirmed by any of the three modes viz: Marriage, Acknowledgement and Evidence.

Marriage

Islamic law attaches more value to the paternity of a child and how such paternity could be rightly determined. It is apt to know that before the paternity of a child

⁴ *Oxford Advanced Learner’s Dictionary*, New 8th Edition International Student’s Edition, Oxford University Press, 1075.

⁵ A Mariam Webster, *Webster’s Ninth new Collegiate Dictionary*, USA, 862.

⁶ Bryan A. Garner, *Black’s Law Dictionary*, Eighth Edition Thomson West, 1163.

⁷ Aminu Muhammad Gurin, *An Introduction to Islamic Family Law*, Malthouse Press Limited, 2014, 193.

⁸ Hammudah ‘Abd al ‘Ati, *The Family Structure in Islam*, Islamic Publications Bureau, Lagos, Nigeria, 1982, 188.

could be determined under Islamic law, there must be a valid marriage which could be regarded as a foundation upon which family relation is built.

Islam considers marriage as a factor that gives legitimacy to a child and attributes him to a particular father. Therefore, the paternity of a child can be well established by marriage between its parents. With presence of a valid marriage, it will be difficult under Islamic law for a man to deny the paternity of a child. Marriage may be established by direct proof. If there is no direct proof, it may be established by indirect proof, that is presumption drawn from certain facts, for instance, prolonged cohabitation with the mother, the acceptance of congratulation after its birth or by acknowledgement.⁹

For a child to be legitimate in Islamic law, he must be the offspring of a man and his wife, or of a man and his slave girl; any other offspring is the offspring of *zina* (fornication or adultery) and cannot be legitimate.¹⁰ The second way in the establishment of paternity is the child's mother who is an *ummul walad* to her master; and the effect of her being so is that the paternity of her child is established from her master without any claim on his part, that is if she were in such a condition that he might lawfully have had intercourse with her.¹¹

It is position of law that a child born outside wedlock is legally regarded as illegitimate child and cannot be attributed or ascribed to the man who has illicit affairs with his mother though the man will face the punishment of *hadd* (if *zina* is proved) as it is prescribed by law. The status of a child is therefore, determined by a valid marriage, this is because Islam places child's legitimacy in wedlock.

Presumption of Paternity/Legitimacy Under Islamic Law

Under Islamic law, the presumptions of paternity from marriage finds its origin from the prophetic tradition which was narrated by Aisha and reported in almost all the *Hadith* Books that *al-walad lil firash wa lil ahir al hajar'* which means, 'the child belongs to the lawful wedlock and the prostitute is to be stoned.'¹²

This tradition according to *Ibn Rushd*, is recognized by all jurists.¹³ This *Hadith* underscores the presumption of paternity within Islamic law where a child is attributed to the husband of the mother. It emphasizes the importance of establishing paternity and maintaining the integrity of lineage.

It is submitted that the import of this *Hadith* is that the paternity of a child born in a lawful wedlock is presumed to be child of the husband of its mother if certain conditions are satisfied. Equally understood from this *Hadith* is that for the paternity of child to be linked to its father, it must be proved that:

- a. A marriage contract exists between the father and mother of a child.

⁹ Aminu Muhammad Gurin, (n 7) 194.

¹⁰ Ibid.

¹¹ Ibid.

¹² Aminu Muhammad Gurin, (n 7) 194.

¹³ Ibn Rushd, *Bidayat al Muftahid Wanihayat al Muqtasid*, vol. 11, 326.

- b. There was actual consummation or possibility of consummation between the parents of the child after marriage without any hindrance. This includes seclusion between the spouses (kha-lwah); sleeping together (mabeet); letting loose the curtain.
- c. That it was consummation of the marriage that led to the conception of the child.
- d. That the child was born between the minimum or maximum period of gestation
- e. There is no legal denial (lian) by the spouses.¹⁴

The first thing to be considered in determining the legitimacy of a child is to see if there was possibility that it could have been conceived during the subsistence of a valid marriage of the child's mother with the person alleged to be the father. It is an essential condition of legitimacy under Islamic law that the child must have been conceived in wedlock or, in other words, the person who is responsible for its conception should be the lawful husband of the child's mother at the time of its conception.

The Prophet Muhammad (S.A.W.) in explaining how important the paternity of a child is said:

A woman who misplaces a child's legitimacy by relating its descent to someone who is not responsible for its conception has committed a grave offence, alienated herself from God, and will be denied the bliss of eternity. Likewise, a father who obscures his child's legitimacy by denying his responsibility for its conception has offended God and inflicted upon himself universal disgrace.¹⁵

This seems so institutionalized in Islam that in the words of Jeffrey, 'the stigma of illegitimacy seldom clings to a child in the Islamic family, even the children of slave concubines are legitimate members of the family with family rights.'¹⁶

Also narrated by Abdullah bin Umar, May Allah be pleased with him, Prophet Muhammad, peace be upon him, said: 'He who knowingly attributes his fatherhood to someone other than his real father will be guilty of unbelief.'¹⁷

Minimum and Maximum Period of Gestation

It is important to make it clear that, validity of marriage is not enough in determining paternity of a child, the child also needs to be born within the generally accepted period of gestation in Islamic law. Therefore, Muslims jurists have given the periods of time, both minimum and maximum, during which a fully developed

¹⁴ Aminu Muhammad Gurin, (n 7) 195.

¹⁵ Jalaludeen bn Abdulrahan Sayutiyy-*Al-Jamihu As-sagir*, Darul Kutub Al-Ilmiyuh, Beirut 2014, 2942. See also Hammudah Abd al Ati, (n 8) 190.

¹⁶ Ibid.

¹⁷ Sahih Bukhari.

child can be born. These periods are on possibility and not in probability.¹⁸ The shortest period of gestation, according to all the schools of law is six months. They based their views on the community reading of the following verses and deduced the minimum period of gestation therefrom. The Holy Qur'an says: 'And we have enjoined man on doing good to his parents; with trouble did his mother bear him and with trouble did she bring him forth; and the bearing of him and the weaning of him was thirty months...' ¹⁹ He said in another chapter thus: 'And the mother should suckle their children for two whole years for him who desires to make complete the time of suckling...' ²⁰ Commending on the first verse, 'Allahmah Yusuf Ali says: 'it leaves six months as the minimum period of human gestation after which the child is known to be viable. This is in accordance with latest ascertained scientific facts.'²¹

If the entire gestation and fostering period consist of thirty months and the fostering period is said to be of two years, the remaining months must be six which is the minimum period of gestation as unanimously agreed upon by Islamic jurists.²² Therefore, if a man has married a woman and the latter is delivered of a child at less than six months, its paternity is not established from the father, but, if a child is delivered at exactly six months or more its paternity is established from him.²³

However, Imam Maliki, Shafi'i and Hanbali agreed that a period of six months less five days after consummation of marriage is regarded to be the minimum period of gestation. While Imam Hanifah, on the other hand, considers the child legitimate if he is delivered six months after the conclusion of the marriage contract not necessarily consummation of the marriage.²⁴ There is no unanimous view on the maximum period of gestation. Jurists such as Muhammad Ibn Al-Hakam opined that a child does not remain in its mother's womb for more than one year. The Hanafi school holds the view that a child may remain in its mother's womb for the period of two years, while the Zahiri School holds a liberal view that a child may remain in its mother's womb for only nine months. On the other hand, the Maliki has fixed it at five years on the basis of allegation that one Dahhak bin Musahim was born within five years of its conception and four years according to Shafi'i and Hanbali.²⁵ In absolute agreement with this view, 'Abd al 'A ti said that, the conception-birth span is set by various schools of law at a minimum of six lunar months and a maximum of four years.²⁶

¹⁸ Aminu Muhammad Gurin, (n 7) 195.

¹⁹ "Al-Qur'an Al-Kareem", 46:15.

²⁰ "Al-Qur'an Al-Kareem", 2:233.

²¹ Abdullah Yusuf Ali, *The Holy Qur'an Text, Translation and Commentary*, The Islamic Foundation, The Pitman Press Bath, London, 1975, 1370.

²² Aminu Muhammad (n 7) 197; see also Hammudah 'Abd al 'Ati (n 8) 190.

²³ Aminu Muhammad (n 7) 197, Ibid

²⁴ Ibn Rushd's *Bida'ayat Al-Mujtahid Wa Nihayat Al-Muqtasid*, Daru Al-Hadith (Cairo 2004) vol. 2, 352.

²⁵ Aminu Mohammad (n 7) 196.

²⁶ Hammudah 'Abd al 'Ati, (n 8) 190.

However, in the case of *Rabiu v Amadu*,²⁷ the Supreme Court by Sulaiman Galadima, JSC, held that: where a child was born within the minimum period prescribed and accepted for a normal birth, going by the Islamic jurisprudence, a child born within six (6) months or five (5) months and twenty five (25) days is a legitimate child, since the maximum period is two (2) years while the minimum is six (6) months.

Acknowledgement by the Father

According to Professor Aminu Muhammad, acknowledgement means literally to confirm or to establish, but, in law, it is defined to be the giving of information for the establishment of a right in favour of another against oneself.²⁸ Where the paternity of a child, that is, his legitimate descent from father, cannot be proved by establishing a marriage between his parents at the time of his conception or birth, the Islamic law recognizes acknowledgement as a method whereby such marriage and legitimate descent be established as a matter of substantive law, for purpose of inheritance.²⁹ It has been observed that the doctrine relates only to cases where either the fact of the marriage itself or the exact time of its occurrence with reference to the legitimacy of the acknowledged child is not proved in the sense of the law, as distinguished from disproved.³⁰ In other words, the doctrine applies only to cases of uncertainty as to legitimacy, and in such cases acknowledgement has its effect, but, that effect always proceeds upon the assumption of a lawful union between the parents of the acknowledged child.³¹ It is pertinent to state that this acknowledgement, whether verbal or written, can carry weight in establishing paternity under Islamic law.

Evidence

Evidence or witness testimony is also a recognized means to verify paternity ties. Witness testimony holds significant position in Islamic law for establishing paternity. In paternity disputes, credible witnesses who have first hand knowledge of the circumstances may testify to support or challenge claims of parentage.³² It is submitted that witnesses here must be at least two male witnesses and if there are no two males, then a male and two females in line with Qur'anic provisions.³³

Qiyafah – Physiognomy (Circumstantial Evidence)

In addition to the above primary methods of establishing paternity, Muslim jurists also discussed other types of circumstantial evidence or indirect proof, which can be used to evaluate paternity claims. One of the most important types of circumstantial evidence was physiognomy (qiyafah), which was quite popular in the pre-Islamic

²⁷ (2012) 1 S.C. (Pt. 11) 16 – 38, Also reported in (2013) 1 SQLR Part 1, p. 28.

²⁸ Aminu Muhammad, (n 7) 196.

²⁹ Ibid, 197

³⁰ Ibid.

³¹ Ibid.

³² Ibn Hajar al-Asqalani, *Fiqh al Bari*, 12:61.

³³ “Al-Qur’an Al-Kareem” 2:282.

Arabian culture. The term is derived from the Arabic root (q'afa), which signifies the act of following, pursuing or tracing. It conveys the ability to trace marks on the ground, primarily in the desert. It also denotes the ability to examine resemblance in bodily and physical features for the purpose of confirming family relationships, especially in paternity disputes.³⁴ Although, *qiya fah* is not mentioned explicitly either in the Qur'an or the *Sunnah* of the Prophet, several indirect references are made to it in lineage-related traditions.³⁵ One of the strongest textual foundations in favour of *qiy'afah* is the prophetic report which implies the prophet's endorsement/approval of this method. According to this report, the Prophet expressed satisfaction upon learning that the physiognomer Mujazziz al-Mudliji affirmed/confirmed the paternity of the companion Usamah ibn Zayd, even though Usamah's skin was dark and his father's was fair.³⁶ The physiognomer based his opinion on other bodily features and this incident was often interpreted to support the validity of physiognomy as a method for paternity verification.³⁷

Juristic discussions on the possibility of using *qiyafah* as a means to verify paternity claim is usually traced to this report. Most jurists upheld *qiyafah* as a secondary method if it does not contradict a stronger proof such as an established licit sexual relationship. This view is based on the absence of a definitive evidence against *qiyafah*, the Prophet's tacit approval in the report mentioned above and also its consistent use by the Prophet's companions as well as the subsequent generations of Muslim authorities in the legal tradition.³⁸ The Hanafis, however argued against the use of *qiyafah* on the grounds that it amounts to judgment on the basis of conjecture.³⁹ According to this view, evidence used for paternity verification should be limited to *Shari'ah* – approved methods such as the licit sexual relationship for paternity establishment and *lian* for paternity negation.⁴⁰

With regard to the alleged tacit approval of the Prophet implied in the above report, the Hanafi notes that Usamah's paternity was established by the already existing licit sexual relationship (between his parents) and not by *qiyafah*. Most jurists, on the other hand, justify the possibility of resorting to physiognomy in contested cases by arguing that verification of lineage relationships is an important personal and social need. *Shari'ah* seeks to provide means to enable establishment of paternity

³⁴ Ayman 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, no. 1 (2012): 214-39.

³⁵ Ibn Qayyim al-Jawziyyah, *al-Turuq al-Hukmiyyah fi al-Siyasah al-Sha'iyah*, (Cairo; Dar al-hadith).

³⁶ Ibid.

³⁷ Sarakhsi, *al-Mabsut*, (Beirut: Darul-Ma'rifah, n.d.) 17:70; Al-Qarafi, *Kitab al-Furuq: Anwar al-Buruq fi Anwa al-Furuq*, 4 Vols. (Cairo; Dar al-Salam, 2001), 3:897-903. Also, Ibn Hajar al-Asqalani, *Fath al-Bari*, 12:61.

³⁸ Ibn Qayyim al-Jawziyyah, (n 35) 182.

³⁹ Al-Sarakhs *al-Mabsut* (n 37) 3:897-903.

⁴⁰ Ayman Shabana, 'Islamic Law of Paternity Between Classical Legal Texts and Modern Contexts: From Physiognomy to DNA Analysis' *Journal of Islamic Studies*, 25, No. 1 (2014) 1-32.

whenever possible even on the basis of probable evidence. Moreover, testimony conditions in paternity cases are less stringent and paternity within legally defective types of marriage is also recognized. This includes paternity within imperfect or deficient marriage contracts (*fasid*) and also paternity of children whose birth results from what classical jurists referred to as doubtful intercourse (*Wat' bi-shubhah*).⁴¹

Meaning and Nature of Deoxyribonucleic Acid (DNA)

DNA is an abbreviation for deoxyribonucleic acid which is the molecule that carries genetic information for the development and functioning of an organism. DNA is made of two linked strands that wind around each other to resemble a twisted ladder – a shape known as a double helix.⁴² It is a scientific method which is used to establish the identity of a certain individual from samples of tissues or blood taken. DNA is the deoxyribonucleic acid that carries the genetic information in the cell and which is capable of self-replication and synthesis of RNA (ribonucleic acid). The sequence of nucleotides determines individual hereditary characteristics.⁴³ It has also been defined as the genetic structure that determines the individual hereditary characteristics of each person.⁴⁴ It should be noted that when the woman's ovum is fertilized, the new creature inherits half of his hereditary content from his father and the other half from his mother. Every person has its own special DNA which is different from that of other persons. It is impossible to have identical DNA except in identical twins.⁴⁵ The DNA is characterized by high resistance against rotting, environmental changes and pollutants. It resists all factors of dissolution, namely it preserves its properties for a very long period under the harshest environmental conditions (heat, moisture and dryness). Hence, a person carries his hereditary characteristics from the moment of creation to the moment of death. The results of DNA testing provide conclusive evidence as the accuracy of results amounts to 98 – 100%.⁴⁶

It can be understood from the above that DNA is a blood test that shows the relationship between the father and a child. Therefore, if DNA report of a father is not the same as the one of his child, the child is not his blood. It can be further understood that the genetic imprint is not shared by two humans, therefore, this property can be used to solve paternity issue between two individuals – the child and potential father, thus asserting or objecting to the father's biological ties.

⁴¹ Ibid. Also see, ak-Kasani, *Bada; al-Sanai fi Tartib, al-Sharai*, 10 Vols (Beirut: Dar al-Kutub al-Ilmiyyah, 2003) 8:467.

⁴² National Human Genome Research Institute – <https://www.genome.gov/genetics-glossary/Deoxyribonucleic-Acid>assessed> on the 25th of July, 2024.

⁴³ *Microsoft Bookshelf Dictionary*, 1996 – 97 edition.

⁴⁴ Yaaseen bin Naasir Al-khateeb, 'DNA Test: Concept, Authority, Scope of Application, Prohibited Applications and Objections' in *AL ADL*, Issue No. 41, Year II Muhrram, 1430 H. 95.

⁴⁵ Ibid.

⁴⁶ Ibid.

Admissibility of DNA as a Proof of Paternity Under Islamic Law

The emergence of DNA testing has revolutionized the field of paternity determination. DNA tests provide a scientific and objective method to establish biological relationship. The accuracy of DNA test is widely recognized in modern legal systems, and they have been accepted as evidence in many jurisdictions worldwide. However, the admissibility of DNA tests as proof of paternity under Islamic law remains a subject of debate among Islamic scholars and legal authorities.

The general rule is that DNA is not admissible as a proof of paternity in Islamic law. This is because the nature of *Shari'ah* is such that, it endeavours to abstain from humiliating anybody by referring to him as an adulterer or illegitimate as much as possible. It tries its best to attribute the child to the husband of the mother. There is a famous *Hadith* in which the Messenger of Allah (SAW) said: The child will be attributed to the rightful owner of the bed (husband) and the adulterer will receive the stone.⁴⁷ This means that, the right of paternity will be attached to the person to whom the mother of the child is married. In such case, paternity will not be established with the adulterer. The *Shari'ah* gives this right of paternity to the person who is married to the mother. Even if DNA test proves the child to be that of the adulterer, paternity will not be attributed to him. The *Hadith* also says that the adulterer will receive the stone. It means that he is liable to be stoned as punishment and will not receive the child. Some scholars have explained the meaning of stone in this *Hadith* context to mean disappointment and deprivation.⁴⁸ Also, in a situation where the husband denies the child to be his and the wife agrees with him, the child will still not be attributed to the adulterer, neither will paternity be established with the husband. The child in this case will be attributed to its mother.⁴⁹

In Islamic jurisprudence, paternity determination is very significant, therefore the Qur'an and *Hadith* offer guidance on familiar relations. The Qur'an emphasizes the importance of establishing lineage, and there are verses addressing issues related to paternity, inheritance and familiar responsibilities.⁵⁰

While the Qur'an provides general principles, it does not explicitly address modern DNA testing. However, Islamic scholars recognize the importance of utilizing contemporary means for accurate paternity determination. The concept of "ilm al-nasl" or the science of lineage is referenced in this context, acknowledging the relevance of reliable methods, including DNA to establish paternity. *Hadith* literature contains statements attributed to Prophet Muhammad (Peace be upon him)

⁴⁷ Ibn Hajar al-Asqalani, *Fath al-Bari bi Sharh Sahrh al-Bukhari*, 13 vols. Also, *Al-Bukhaaree*, 315. Also *Saheeh Muslim*, 2/1080, # 36.1457, *Sahih Ibn Hibbaan*, 9/413 and *Al-Mustadrak* by Al-Haakim, 3/721.

⁴⁸ Yaaseen bin Naasir Al-Khateeb (n 44) 128.

⁴⁹ <https://www.nairaland.com/6345790/islamic-ruling-dna-testing-establish>

⁵⁰ Ibn Abdul al-Salam Izz al-Din, *al-Fawaaid fi ikhtisar al-Maqasid*, (Damascus: Dar al-Fikr, 1995) 50. See also "Al-Qur'an Al-Kareem" 4:2,3,4,5,6,7,8,9,10,11,12,19,20, 21,22,23,24,25,34,35, and 176

that emphasise the significance of confirming lineage, and scholars have accepted the use of credible means, such as DNA testing, to establish paternity in contemporary legal contexts.

Islamic legal scholars often consider both traditional sources and scientific advancements to ensure justice in matters of lineage and inheritance, recognizing that DNA evidence aligns with the broader Islamic objectives of upholding justice and resolving disputes.⁵¹ Some scholars argue that DNA evidence is consistent with Islamic jurisprudence (fiqh), as it can establish lineage, identify perpetrators and resolve legal disputes. They emphasize the compatibility of DNA testing with the principles of justice and truth-seeking in Islamic law.⁵²

However, others may express concern about potential errors in DNA testing or the possibility of violating privacy, particularly in cases where consent is unclear. No doubt, opinions are differed based on individual scholar's interpretations of Islamic teachings and their understanding of modern scientific advancements.

Arguments for the Admissibility of DNA Testing for the Establishment of Paternity under Islamic Law

The question about admissibility of DNA testing in Islam was addressed by Fiqh Council of the Fiqh Academy of the Muslim World League and was premised on analogical deduction (Qisas). It was reported that the Prophet and the companions had practiced and used some forms of scientific techniques in their judgment to resolve some disputes. These techniques are comparable with modern DNA testing. For instance, Ali (May Allah be pleased with him) used an experimental technique to prove that an alleged semen stain was not a real semen stain in rebutting the claim of a woman who was alleged to have been raped. It was reported that during the time of Umar bin al-Khattab as the *Caliph*, a woman who was frustrated by one *Ansar* man, has stained some parts of her dress and her legs with a portion of raw egg and then went to lodge a complaint of being raped to the *Caliph*. The *Caliph* sought for opinion of a few women and they seemed to have agreed on the finding that they were stains of semen on her body and dress. The man was arrested but, denied the allegation. Caliph Umar then consulted Ali. Ali asked someone to bring hot boiling water, poured it on the stain and all realised that it was an egg rather than semen.⁵³

In another instance, it has been related that a black man complained to Umar and said, "I am black and my wife is black. But, my wife gave birth to a fair complexioned child". His wife said to Umar, "I swear to Allah that I have not committed *zina* and this is the son of my husband." Umar sought for Ali's opinion on this case. Ali said to the man, "Will you give me the true information if I ask you anything?" He said, "yes". Ali asked him, "Did you have sexual intercourse with your wife during her menses?" He said "Yes". Ali exclaimed with joy and said

⁵¹ Muhammad Sahilh Ibn Uthaymeen, *al-Sharh al-Mumti'u: 'Ala Zad al-Mustanqi'* (Al-Damam, Dar al-Nashr Dar-in al-Jawzi, 2001), vol. 12, 127.

⁵² Ibn Abdul al-Salam Izz al-Din, (n 50) 50. See also "Al-Qur'an Kareem", 16:90 and 4:58.

⁵³ Referred to by Zulfakar Ramlee in a A-Qarinah: its Role in Islamic Law of Evidence, 123.

“When a human sperm mixes with blood, it gives birth to a fair-complexioned child so, don’t deny your son. You have done yourself wrong.”⁵⁴

It appears that the decision the Fiqh Academy of Muslim World as to the admissibility of DNA testing was deduced from the above narration using analogical deduction. The old case being the above instances during the time of the companions and the new case being DNA, the effective cause seems to be both scientific method of proof during this present day and during the lifetime of the companions which are both admissible as a method of proof.

Proponents of the admissibility of DNA tests contend that the principles of Islamic law such as justice (adl) and the pursuit of truth (haqq)⁵⁵ support the acceptance of DNA evidence. They further argued that the DNA evidence could potentially mitigate the possibility of ‘shubha’ (doubt) in establishing paternity and could also reduce incidents of *ithm* (sin or blame). Moreover, it has been proposed that these tests can serve as a ‘*bayyina*’ (clear proof)⁵⁶ a term rooted in Islamic jurisprudence which means clear evidence that leaves no room for doubt. It has been further argued that in cases such as disavowing paternity, DNA test could indeed be very useful within the Islamic Court system. To this end, some Islamic nations like Jordan, Tunisia and UAE have started to respect and accept DNA paternity as admissible proof, thus indicating a shift in perceptions.⁵⁷

Some scholars bring a more progressive perspective forth like Dr. Yusuf Al-Qaradawi, an influential Islamic scholar who applauds science and perceives the immutable nature of DNA evidence as a judicious advancement that should drive the transformation of Islamic law. According to him, the results of a DNA test is compelling and should be accepted as direct evidence of paternity. This position opines that the evolved scientific certainty should transcend centuries-old rules, challenging the traditional jurisprudential status-quo. Some scholars also contended that DNA testing could function as definitive proof of paternity.⁵⁸

Argument Against Admissibility of DNA as a Proof of Paternity Under Islamic Law

On the flip side, there remains a degree of hesitance to fully embrace this scientific method among other Islamic scholars because it may contradict the existing Islamic regulations concerning family structure and ‘mahram’ (non-marriageable kinship) identification. They argue that DNA testing might disrupt the concepts and rules around lineage that Islamic culture and law have protected for centuries.⁵⁹

⁵⁴ Ibn Qayyim, *Al-Turuq al-Hukmiyyah*, 43.

⁵⁵ “Al-Qur’an Al-Kareem” 103:2-3, 33:23 and 24, 3:17, and 4:58.

⁵⁶ “Al-Qur’an Al-Kareem” 98: 1 and 4.

⁵⁷ Alamdari, S. Ghadipasha, M. Amini, M, Sedaghat, Z., & Sheik Hazadi, A., ‘Admissibility of DNA Evidence and the Adversarial System: Comparative Study in Selected Countries,’ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5862528/>

⁵⁸ Ibid.

⁵⁹ Ibid.

The opinion of some jurists is that the employment of DNA testing in lieu of original Islamic methods of proof will certainly lead to a disruption or cancellation of the *Shari'ah* methods. One of the opponents of the DNA test is Sheikh Muhammad Al-Fayyadh, who pointed out that the examination is not an evidence in establishing parentage or not, but, he considered it as an evidence that it was subject to forgery or an error. As for Makarim Al-Shirazi and Muhammad Al-Rouhani, they recommended not to adopt DNA to establish or prove paternity, rather, Muslims should prove the paternity through the Islamic legitimate ways. In fact, finding revealed that the opinion of the jurists of the *Shiite* sect is that they prefer the legal methods instead of the genetic fingerprint in establishing lineage.⁶⁰

Although, supporters of this new method often argue that if DNA testing can provide almost certain results, it should be used as the main method to verify paternity claims, critics, on the other hand, argue that DNA evidence is not perfect and its results are often probabilistic, which can also be manipulated.

Imam Malik School of Islamic jurisprudence recognizes and relies on the evidence of an expert on some matters whenever necessary, but, medical report in determining paternity of a child is considered unreliable.⁶¹ According to the school of thought, 'The popular view is that, the opinion of an expert cannot be relied upon to ascertain paternity in relation to children of a free woman, but, same can be relied upon to establish paternity in case of children of a slave'.⁶²

It is obvious from the above view of Malik School that DNA test cannot be relied on to confirm the paternity of a child in Islam, except for the child of a slave. It has been observed that the DNA tests, though very accurate, they may be subject to some conditions which render them inaccurate like human and laboratory errors.⁶³ Samples of certain person may mix with those of another person, the expert performing the test may commit a mistake or his assistants in the laboratory may not follow the correct procedures of testing the sample.⁶⁴ Moreover, careless sterilization and cleaning of the testing machines and other human or laboratory errors may affect the result of the DNA test.

Admissibility of DNA as a Supplementary/Supporting Proof of Paternity Under Islamic Law

Some scholars like Sheikh Atiyyah Saqr⁶⁵ affirm the use of DNA testing, but, only as supplementary evidence. They argue that it should not overrule the conventional

⁶⁰ Omar Al-Assam, 'The Effect of DNA Test on Jurisprudence Ruling' King Fahd University, Riyyadh, 2007.

⁶¹ Ibn Farhun, *Tabsiratu Al-Hukkam*, vol. 2, 100.

⁶² Ibid.

⁶³ Yaaseen bin Naasir Al-Khateeb (n 44) 129.

⁶⁴ Ibid.

⁶⁵ Former Head of Al-Azhar Fatwa Committee.

methods prescribed by Islamic law. This standpoint reconciles modern science with religious principles by accepting DNA as a corroborating piece of evidence.⁶⁶

In general, contemporary Islamic discussions on the possibility of using DNA evidence for paternity verification seek to situate this new method within the classical juristic framework for paternity regulations. Considering the distinction between primary and secondary verification means, two main approaches can be identified for the incorporation of DNA evidence: comprehensive and limited. While the former seeks to recognize DNA evidence as a new and almost an independent method, which can ensure the achievement of the *Shari'ah* objectives in the domain of paternity and lineage, the latter insists that DNA evidence should be treated as a form of circumstantial evidence, akin to the classical method of *qiyafah*.⁶⁷

While some jurists have pursued the first approach, the overwhelming majority of contemporary Muslim scholars, as evident in individual as well as institutional *fatwas*, statements, resolutions, and recommendations, have adopted the second approach. This is exemplified by the resolution of the Islamic Fiqh Council of the Muslim World League in its 16th session in Mecca in January, 2002. The resolution recognizes DNA testing as an effective scientific method with certain or near-certain results. However, it emphasizes that DNA testing should support *Shari'ah*-based methods, not replace already established paternity relationships, and be primarily used in contested cases.⁶⁸

This specific instance of DNA paternity testing demonstrates contemporary juristic efforts to adapt to change and accommodate modern developments. Although, conclusions vary, these efforts consistently draw on pre-modern discourses and invoke ethical-legal principles related to various topics in marriage, divorce and evidentiary structures. The central question posed by DNA testing is whether the paternity relationship will remain linked to the marriage-paternity presumption. While modern legal thought appears to have severed this connection, Islamic legal discussions indicate that the prevailing view leans toward maintaining this association. Here below are the opinions of scholars regarding the issue:

First, the prominent Azharite scholar Sheikh 'Abdul-Majeed Subh, states:

I would like to stress that DNA as well as the hereditary prints are no more than supporting evidences. In other words, they cannot be considered as independent legal evidences on their own. Thus, if we are to consider DNA as an evidence that is supposed to establish paternity or prove a crime such

⁶⁶ Kalia, M. 'A few Reflections on the Legal Authenticity of the DNA Test', 2017. <https://core.ac.uk/download/pdf/82670731.pdf> assessed on the 25th July, 2024.

⁶⁷ Ayman Shabana, 'Islamic Law of Paternity between Classical Legal Texts and Modern Contexts: From Physiognomy to DNA Analysis', *Journal of Islamic Studies*, 25 No. 1, 2014: 1-32.

⁶⁸ It is published in *Majallat al-Majma' al-Fiqh al-Islam*; 13/15 478-81, 2002. Other Statements have also been issued by the Islamic Fiqh Academy of the Organisation of Islamic Cooperation and the Islamic Organisation for Medical Sciences.

as *zina*, then, it must be supported by clear legal proofs such as witnesses or confession.⁶⁹

Second, Sheikh Muhammad Iqbal Nadri, Imam of Calgary Mosque, Canada, and former Professor at King Saud University, Saudi Arabia was equally of the view that:

The DNA testing can be used in Islamic Courts as a supporting evidence in the absence of four just witnesses. However, it cannot be the sole and only evidence to prove a huge crime like *zina* which entails inflicting severe punishment on the criminal. The reason for not accepting DNA as a sole and complete evidence is that DNA testing cannot tell us whether the one who committed adultery did it willingly or unwillingly, be it the man or the woman.

The resolution of the Islamic Fiqh Council of the Muslim World League, which was issued in its 16th session, held in Mecca in January, 2002 acknowledges DNA testing as an effective scientific method which can yield certain or near certain results. However, while the resolution indicates that it should be considered more effective than the traditional method of physiognomy, it specifies certain stipulations that should govern its implementation. For example, according to the resolution, DNA testing for paternity verification should be used to support *Sharia*-based methods, but, not to verify already existing and established paternity relationships. Moreover, it should be used mainly in contested and disputed cases.⁷⁰

It was reported in October, 2010, that a family court in Egypt rejected the DNA results in a case establishing paternity. The primary reason for rejecting the test results is that DNA testing does not adhere to Islamic law, *Shari'a*. The fact of the case is that a husband who doubted his paternal relationship with his daughter conducted a DNA test to prove that his daughter was fathered by another man. The DNA testing proved his allegation to be correct. Accordingly, he filed a law suit against his wife, insisting that his name be removed from the girl's birth certificate. The court denied his petition on the grounds that DNA is not mentioned in the Qur'an or the *Sunnah* (the words and practices of Prophet Muhammad SAW). The court noted that DNA test results contradict the rules of evidence under Islamic law in cases of proving a paternal relationship. In its decision, the court stated that under Islamic law, two requirements must be met in order to prove a paternal relationship: (a) sexual intercourse must have taken place between the husband and wife and (2) the marriage contract must be valid. In this case, the court found that both

⁶⁹ Questions and Answers with Seheikh Abdul-Majeed Subh, Sheikh Muhammad Iqbal Navdi, Sheikh Abdul Khaliq Hassan Ash-Shareef (08/03/2020), <https://aboutislam.net/counseling/ask-the-scholar/family/is-dna-enough-to-prove-paternity>.

⁷⁰ It is published in *Majallat al-Majma al-Fiqhi al-islam*; 13/15/2002, 478-81. Other statements have also been issued by the Islamic Fiqh Academy of the Organisation of Islamic Cooperation and the Islamic Organisation for Medical Sciences.

requirements had been met. Therefore, it dismissed the results of the DNA test, arguing that religious evidence is more compelling than technical evidence.⁷¹

It is clear from the above *Fatwa* that DNA is not a sufficient proof to establish paternity under Islamic law. It must be corroborated by other proofs. This is due to the continuous change in the principles that govern such technology. It stands to reason that *Shari'ah* principles are based on certainty and nothing should be left to risk doubtfulness when it comes to establishing an important issue such as the use of DNA testing for paternity verification. More importantly, in a situation whereby a modern technology, that is, DNA test conflicts with the ruling of Islamic law, the ruling prevails. The modern technology will only be admitted in evidence where it does not conflict with the ruling of Islamic law.

It is the view of this writer that Islamic law should prioritise the preservation of family integrity and social stability over scientific accuracy. The reason is that DNA tests may undermine the institution of marriage and lead to the breakdown of families. The DNA tests may challenge the legal presumptions of paternity based on testimonial evidence, potentially causing confusion and disputes. Some opponents also raise concerns about the potential misuse of DNA tests for immoral purposes, such as extramarital affairs or illegitimate claims.⁷²

DNA tests are not explicitly mentioned in classical Islamic legal texts, and therefore cannot be considered as conclusive proof of paternity. Islamic law requires witnesses or a confession for establishing paternity. Some scholars are cautious about fully accepting DNA testing as conclusive proof of paternity. They emphasise the importance of maintaining the social and legal aspects of paternity, such as marriage, acknowledgement and upbringing. They argue that DNA testing should be used as supplementary tool rather than the sole determinant of paternity. They believe that solely relying on DNA testing may undermine the social and legal right of individuals involved.⁷³

Islamic Ethical Considerations: Navigating the Intersection of Science and Tradition

The integration of DNA testing into paternity determination brings to the forefront a myriad of ethical considerations within the context of Islamic principles. Central to these considerations is the balance between the pursuit of truth and justice on one hand and the preservation of individual rights and privacy on the other.

In Islamic ethics, the protection of privacy and the avoidance of undue harm are paramount. The concept of "sitra" guarding one's privacy, is deeply ingrained in

⁷¹ Sadek, G Egypt: 'Appellate Court Rejects DNA Results that Contradict *Shari'ah* Rules of Evidence' (web page) Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2010-10-20/egypt-appellate-court-rejects-dna-results-that-contradict-sharia-rules-of-evidence/>.

⁷² <http://fiqh.sialmonline.net/en/dna-can-it-be-sole-proof-to-establish-paternity>> accessed on the 25th of July, 2024.

⁷³ Ibid.

Islamic teachings.⁷⁴ As such, the use of DNA testing raises questions about the extent to which an individual's genetic information can be disclosed and the potential implications for their reputation and social standing.

Additionally, the principle of “Harm (Darar)” plays a crucial role in Islamic ethical deliberations. While the pursuit of truth is valued, it must be weighed against the potential harm that may arise from revealing certain information. This includes the impact on the family dynamics, social relationships, and well-being of individuals involved.

Islamic ethics also emphasise the importance of justice and fairness.⁷⁵ In the context of paternity determination, the question is that: Does the introduction of DNA testing contribute to a more just and equitable resolution of disputes, or does it potentially disrupt established legal and social norms?

Furthermore, the potential for misuse or misinterpretation of DNA results poses ethical challenges. Ensuring the proper handling of genetic information, preventing unauthorized access and maintaining the integrity of the testing process become crucial aspects of ethical DNA testing practices within an Islamic framework.

As we navigate this complex terrain, it becomes evident that the ethical implications of using DNA as a proof of paternity extend beyond the scientific realm. They intervene with the core values and principles that underpin Islamic legal traditions, prompting a nuanced examination of how ethical considerations can be harmonized with the pursuit of truth in the evolving landscape of paternity determination.

Conditions for the Permissibility of the Employment of DNA Testing

Even though modern Muslim jurists have supported the use of DNA testing in some circumstances, they have established criteria to prevent clashing with the goals and principles of *Shari'ah* which could ultimately cause harm. These conditions are grouped into legal and technological. These prerequisites are based on the resolution of the Islamic Fiqh Council⁷⁶ thus:

1. If the paternity of a child is established based on the principle of the matrimonial bed (al-firaash), the DNA test should not be used because establishing paternity by way of the matrimonial bed is the strongest evidence for the establishment of paternity.
2. DNA testing should not be used to examine the validity of a child of a legally recognized family in order to prevent the emergence of unwarranted mistrust and a precarious society. However, it is permitted to use DNA testing when there are mixed-up babies in the hospitals.

⁷⁴ “Al-Qur’an Al-Kareem” 24:27 and 28.

⁷⁵ “Al-Qur’an Al-Kareem” 16:90.

⁷⁶ The aforementioned resolutions have been recommended by the Islamic Fiqh Academy Muslim World League in Makkah at its fifteen session held on the 31st of October, 1998, to complete the study of research and studies and developments on the subject of DNA.

3. DNA testing should not contradict reasoning. For example, running DNA testing for a person claiming paternity to a child of his age group or claiming a child without reaching puberty.
4. DNA testing should not be in contravention of the original texts from Qur'an and *Sunnah* to avoid suspension of Allah's injunction.
5. DNA testing should not be employed by an individual but, through judiciary order or through a constituted authority to avoid gambling with principles of *Shari'ah*.
6. Private and commercial sectors with special interests should be prevented from conducting DNA testing and punitive measures be imposed on anyone caught violating this condition to avoid destroying the family institution.
7. Experts to conduct DNA testing should be known for integrity, honesty and perfection in the field and there should not be relationship or enmity between the claimants and people who conduct DNA testing.
8. DNA testing should comprise of forensic specialists, doctors, a legal practitioner and administrators to oversee the result.
9. The DNA sample analysis must be conducted by an upright Muslim because his report will serve as a testimony and, as the *Shari'ah* stipulates, a non-Muslim's testimony in a case involving a Muslim is acceptable only for *wasiyyah* (will and testament) during travel and the like.⁷⁷
10. The DNA test may not be used to deny paternity established by way of the matrimonial bed as a replacement to *lian* because the paternity established by the matrimonial bed cannot be denied except through *lian*⁷⁸ which is the way provided for in the Islamic law.

Admissibility of DNA as a Proof of Paternity Under Nigerian Law

Unlike under Islamic law, DNA is a proof of paternity under Nigerian law. In fact, in any civil proceedings in which the paternity of a child is in issue for the court to determine, the court, may on an application by a party to the proceedings permit and give a direction for the use of scientific tests, including blood tests and DNA tests, to ascertain whether the tests show that a party to the proceeding is or is not the father or mother of that child.⁷⁹ The court is also empowered to give a direction for the taking of blood or other samples from that child, the mother of that child, the father of that child and any party alleged to be the father of that child or from any two of those persons.⁸⁰ However, the previously given direction may be revoked or varied upon an application by a party and where the person whose paternity or maternity is in issue is under the age of eighteen (18) when the application is

⁷⁷ Ibid.

⁷⁸ "Al-Qur'an Al-Kareem" 24:6-9.

⁷⁹ See section 63(1) (a) of Child's Rights Act No. 26, 2003 and section 57 of Child's Rights Law of Lagos State of Nigeria, 2015.

⁸⁰ Ibid, 6.

made.⁸¹ The law also mandates the party applying for DNA tests to specify who is to carry out the tests.

Following the specification made in the application, the court is mandated to specify that the person who is to carry out the tests is the person specified in the application. However, the court may decline to give the direction applied for where it considers that it would be inappropriate to specify the person referred to in the applicant's application because specifying that person would be contrary to any provision of regulations made under section 65 of the Child's Rights Act, which empowers the court to consult the wishes of the child in considering what order ought to be granted in certain instances or for any other reason.⁸²

It is submitted that permitting the applicant for DNA test to specify, in his application, the person who is to carry out the test in line with the provision of the Act⁸³ may give room for him to compromise the person/system and corrupt the outcome of the result. However, the law empowers the court to either accept the person specified in the application or reject him in the interest of justice or where the court feels that accepting him is not appropriate in the circumstance of the case.⁸⁴ It is the view of this writer that the court should take the charge of specifying, nominating and appointing the person who is to conduct the DNA test with a view to determining the paternity of the applicant, his father or mother as the case may be.

The person responsible for carrying out blood tests taken for the purpose of complying with court direction shall make, to the court which gave the direction, a report in which he shall state the result of the tests and whether the party to whom the report relates is or is not indicated by the results as the father or mother of the person whose paternity or maternity is to be determined. He must also state in the report the value of the results in determining whether that party is actually the father or mother of that person.⁸⁵

In order to admit DNA results as a proof of paternity under Nigerian law, the law mandates the court to receive the report as evidence and proof of paternity in the proceedings of the matters stated in the report.⁸⁶ Where a report has been submitted to the court, any party to the proceedings may, with the permission of the court, or shall if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report and that statement will be deemed to form part of the report given to the court.⁸⁷

⁸¹ Ibid, 3.

⁸² Ibid, 4.

⁸³ See section 63(3) (b) of Child's Rights Act No. 26, 2003 and section 57 (4) of Child's Rights Law of Lagos State of Nigeria, 2015.

⁸⁴ Ibid, (4) a & b.

⁸⁵ Ibid, 5.

⁸⁶ Ibid, 6.

⁸⁷ Ibid, 7

It is submitted that the question as to whether the DNA result is admissible or not for establishing/proving paternity under Nigerian law has been laid to rest by section 63(6) of Child's Rights Act⁸⁸ which explicitly and unequivocally mandates the court to receive the report of the test as evidence in the proceedings of the matters stated in the report. Therefore, such report or the result contained therein is an evidence which is admissible as a proof of paternity under Nigerian law.

Conclusion and Recommendations

The admissibility of DNA as a proof of paternity under Islamic law is arguably still an evolving debate in the legal and religious circles. Striking a balance between tradition and technology, requires careful consideration of religious principles, legal frameworks and ethical concerns. The paper has discussed the meaning of paternity and modes of establishing child paternity under Islamic law which modes are marriage, acknowledgement and evidence. The study has shown that paternity of a child in Islam can be presumed only where the marriage contract exists between the spouses. A father cannot deny the paternity of a child born in a legal wedlock except by way of *lian* or where the child was born outside the minimum period of gestation. The study has equally discussed *qiyafah* – physiognomy which is circumstantial evidence or indirect proof which can be used to evaluate paternity claims, because it enjoys prophetic endorsement. The paper has also carefully examined the meaning, nature and admissibility of DNA as a proof of paternity under Islamic law. In its examination, the paper revealed that the accuracy of DNA tests is widely recognized in modern legal systems, and they have been accepted as evidence in many jurisdictions worldwide including Nigeria. In fact, having analyzed some provisions of Nigeria Child's Rights Act, 2003 and Child's Rights Law of Lagos State of Nigeria, 2015, the study has shown that unlike under Islamic law, DNA is a proof of paternity under Nigerian law.

However, the admissibility of DNA test as a proof of paternity under Islamic law continues to be a subject of ongoing discussion and debate among Islamic scholars and legal authorities. While some scholars advocate for its use as a reliable and scientific method, others raise concerns about its potential impact on family dynamics and the welfare of the child. These scholars argue that DNA testing in lieu of original Islamic methods of proof will certainly lead to a disruption or cancellation of the *Shari'ah* methods. Some scholars argue that DNA test results can be admitted as supporting or a corroborative evidence in Islamic law. These scholars emphasized that DNA testing should support *Shari'ah*-based methods, but, not to replace already established paternity relationships.

It is obvious from the view of Maliki School that DNA test cannot be relied upon to confirm the paternity of a child in Islam except for the child of a slave. The writer's major finding is that in view of the resolution (Fatwa) of the Islamic Fiqh Council of the Muslims World League held in Mecca in January, 2002, DNA is not a sufficient or conclusive proof to establish paternity of a child in Islamic law. It must

⁸⁸ 2003, No. 6 which is equivalent to section 57 (7) of Child Rights Law of Lagos State, 2015.

be corroborated by other proofs. That is, it cannot be considered as an independent legal evidence on its own, it can only be a supporting or supplementary evidence. It should be pointed out that *Shari'ah* principles are based on certainty and nothing should be left to risk or doubtfulness when it comes to establishing an important issue such as paternity determination. In the light of this, the DNA testing should be utilized as a corroborative evidence to prove the paternity of a child. It is hereby suggested that DNA testing should be used as a supplement to other forms of evidence, rather than a replacement. In other words, DNA testing for paternity verification should be used to support *Shari'ah*-based methods but not to verify already existing and established paternity relationship. It is also suggested that DNA testing should be used mainly in contested and disputed cases.

In view of the foregoing, the study recommends that Islamic scholars, jurists and religious authorities should engage in continuous dialogue and debates concerning the use of DNA testing for paternity determination particularly in the light of advancement in technology and changing social norms. This discourse should not only consider the compatibility of DNA evidence with Islamic principles but, also explore innovative approaches that harmonise tradition with the demands of a changing world. This dialogue can equally help ensure that Islamic legal principles are respected and upheld, while also allowing for the appropriate use of modern technology in establishing paternity.

It is important to ensure that DNA testing is conducted in a manner that respects the privacy and dignity of the individuals involved, particularly in cases where there may be social or cultural stigma attached to the issue of paternity. Appropriate safeguards should be in place to protect the confidentiality of DNA samples and results. The paper further recommends for balancing the need for modern technology with respect to traditional Islamic legal principles and ethical consideration. It is also recommended that Islamic legal authorities should work towards establishing standardized procedures for DNA testing ensuring that accredited laboratories adhere to ethical and *Shari'a*-compliant practices. Collaboration between Islamic scholar and experts in genetics, bioethics, and law may increase. This interdisciplinary approach could lead to more comprehensive guidelines on DNA testing within Islamic legal framework.

Overall, the appropriate use of DNA testing in verifying or determining paternity under Islamic law requires a nuanced and context-specific approach that respect traditional Islamic legal principles, while also recognizing the potential benefits of modern technology in establishing paternity.