

OPEN ACCESS**ABHATH**

(Research Journal of Islamic Studies)

Published by: *Department of Islamic Studies, Lahore Garrison University, Lahore.*

ISSN (Print): 2519-7932

ISSN (Online): 2521-067X

July-September-2024

Vol: 9, Issue: 35

Email: abhaath@lgu.edu.pkOJS: <https://ojs.lgu.edu.pk/index.php/abhath/index>

DECLARATION OF ABANDONED CHILDREN'S LINEAGE THROUGH CLAIM: ANALYTICAL STUDY OF JURISTIC APPROACHES

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DOI: <https://doi.org/10.54692/abh.2024.09352236>

ABSTRACT

Abandoned children are the neglected figure of any human society and their family identity is the major problem in their life. The lineage of any child may be proved through the legitimate bed relationship of husband and wife, acknowledgment or appropriation, pieces of evidence, aesthetic and claim, etc. This research paper discusses proof of lineage through claim. Claim for this purpose may be from one or more men or two or more women. Also, it may be from married or unmarried women. Every kind of claim has its effects and consequences. Different juristic approaches along with their arguments have been discussed to provide the proper solution for the problem of proving the lineage of abandoned children through claim.

KEYWORDS: Abandoned Child, Claim, Acknowledgement, Father, Believer Nonbeliever, Pluralism, claimant

Introduction:

Lineage is as much important as the life of human body and Allah SWT has attached this matter with humanity from the time of its creation as it has been clearly mentioned in Holy Qura'n that:

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا¹

“It is He who has created man from water: then has He established relationship of lineage and marriage: for the Lord Has power (over all things)”

The proper Arabic word for lineage is “Nasab” which means the relationship and Asfahani declares that this term is used specifically for fathers only this is the worldly relation for which people feel proud and respected in society. Due to this concept, this term is defined technically as “it is the person's connection with his fathers and grandfathers with whom he belongs.”² Ibn-e-Arabi defines it as: “the lineage comprised of the legal mixing of man's and woman's water.”³

This connection has the legal affects on human life and his personality. That is why the Holy Prophet ﷺ educated his followers to be careful about this matter as it has the severe consequences. It is clear from the prophetic verdict that:

أَيُّمَا امْرَأَةٍ أَدْخَلْتَ عَلَى قَوْمٍ مِّن لِّسَنٍ مِنْهُمْ، فَلَيْسَتْ مِنَ اللَّهِ فِي شَيْءٍ، وَلَنْ يُدْخِلَهَا اللَّهُ جَنَّتَهُ، وَأَيُّمَا رَجُلٍ جَحَدَ وَلَدَهُ، وَهُوَ يَنْظُرُ إِلَيْهِ، اخْتَجَبَ اللَّهُ مِنْهُ، وَفَضَحَهُ عَلَى رُءُوسِ الْأَوَّلِينَ وَالْآخِرِينَ⁴

“Any woman who introduces herself to the people who are not amongst them, she is not of Allah in anything, and Allah will not admit her to His paradise, and any man who denies his son, while seeing him (as his real son) Allah conceals him from him, and exposes him amongst the first and lasts (total humanity)”

¹ . Al-Qurān, 25 :54

².umar Bin Muhammad, Ahkām-ul-Janīn Fī-il-Islām (Dār-o-Ibn-e-Hazam, Dār-ul-Andulas, Al-Khadhra', 1421AH), 92.

³. Muhammad Bin 'abdullah Ibn-ul-'arabī, Ahkām-ul-Qur'ān (Dār-ul-Kutub-il-'ilmīyah, Bīrūt, 1424 AH - 2003 AD) 3/447 .

⁴. Abū Dawūd Sulāīman Ib-il-Ash'ath, Al-Sunan, Tahqīq: Muhammad Muhī-ul-Dīn 'abd-ul-Hamīd, Kitāb-ul-Talāq, Bāb-ul-Taghlīz-e-Fil Intifā (Al-Maktabat-ul-'asriyyah, Bīrūt) 2/279, Hadīth No.2263; Ahmad Bin Shu'īb Al-Nisā'ī, Al-Sunan, Kitāb-ul-Talāq , Bāb-ul-Taghlīz-e-Fil Intifā-e- Min-al-Walad (Dār-ul-Risālat-il-'ālamīyah, Bīrūt, 1439 AH - 2018 AD) 6/339, Hadīth No.3481.

It is clear that the concealment of the lineage is not an easy matter but it leads to the wrath of Allah SWT and deprivation from paradise and keeping in view its effect, the Holy Prophet ﷺ declared that:

من ادعى الى غير ابيه وهو يعلم انه غير ابيه فالجنة عليه حرام⁵

“Whoever claims (his lineage) other than his father and he knows that he is other than his father, then heaven is forbidden for him”

That is why Allah SWT clearly orders that:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاخُوانُكُمْ فِي الدِّينِ وَ مَوَالِيكُمْ⁶

“Call them by their [real] fathers' names: this is more equitable in the sight of God; and if you know not who their fathers were, [call them] your brethren in faith and your friends”

Keeping in view the topic under discussion it is clear that the lineage problem is a social as well as the legal issue related to abandoned children as it proves parentage of the children and affixes the guardianship liability for the father, proven over, otherwise, the guardianship criteria will be changed and such liability will be transferred to some other person or the institution. If this issue is not resolved, the child will be faced with a situation in society that his father is unknown and it will be clear for the adulthood of his/her parents and it will remain with him/her as a social stigma throughout the life of such child. Such abandoned children will automatically face the basic and severe problem of livelihood expenditures and inheritance. All the importance of lineage and that is why Islam educated the Muslim community:

- To attach the children with their fathers not to any other person and declare this matter nearer to justice⁷;

⁵. Abū 'abdullah Mummād Bin Ismā'il, Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Farā'idh, Bāb-o-Man Idda'ā Ila Ghaīr-e-Abīhe (Dāru ṭaūq-il-Najāt, Dimishq, 1422 AH), 8/156, Hadīth No. 6766; Muslim Bin Hajjāj, Al-Jāmi'-ul-Sahīh, Tahqīq: Muhammad Fuūād 'abdul Bāqī, Kitāb-ul-'Aīmān, Bāb-o-Baīān-e-Hāl-il-'Aīmān Man Raghība 'an Abīh-e-Wa Huwā'ī 'lamu (Dār-o-Ihīa Al-Tarāth al-'Arabī, Bīrūt) 1/79, Hadīth No. 112.

⁶. Al-Qurān, 33: 5

⁷. Ibid

- Prohibited the fathers to refuse their lineage and warned the mothers not to interfere with the lineage of their husband with those who are not theirs⁸;
- Prohibited the children to attach themselves to the persons who were not their fathers and warned them of the deprivation of heaven⁹;
- Prohibited from attacking the lineage and declared it one of the Dark Age morals¹⁰;
- Declared Iddah obligatory for divorce or husband's death to ensure that the womb is free from male sperms for lineage purification and avoiding any mixing chance¹¹;
- Prescribed the adultery punishment called Hadd-e-Zina just to avoid the illegal sperms mixing and doubted lineage in case of pregnancy and Ibn-e-Badais declares such production just as killing the child due to legal deficiencies and ugliness for such child¹²;
- Legislated the system of curses (لعن) between husband and wife in case of committing adultery to protect and preserve the lineage¹³;
- Rejected all the doubts and assumptions denying the legacy of lineage for a child born after the legal wedlock and a tradition revealed by Abu Huraira is the conclusive proof for such rejection¹⁴ and Ibn-e-Hajar

⁸.Abū Dawūd, Al-Sunan, Kitāb-ul-Talāq, Bāb-ul-Taghlīz-e-Fil Intifā, 2/279, Hadīth No.2263; Al-Nisā'ī, Al-Sunan, Kitāb-ul-Talāq , Bāb-ul-Taghlīz-e-Fil Intifā-e- Min-al-Walad, 6/339, Hadīth No.3481

⁹. Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Farāidh, Bāb-o-Man Idda'ā Ila Ghaīr-e-Abīhe, 8/156, Hadīth No. 6766; Muslim, Al-Jāmi'-ul-Sahīh, KitābAl'Aīmān, Bāb-o-Baīān-e-Hāl-il-Aīmān Man Raghība 'an Abīh-e-Wa Huwā'ā'lamu, 1/79, Hadīth No.112

¹⁰. Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Aīmān, Bāb-ul-M'āsī Min Amr-il-Jāhiliyyah Wa Lā ūkaffaru Sahībuhā Bi irtikābaihā Illā Bi-il-Shirk, 1:15, Hadīth No. 30

¹¹. Al-Qurān, 228, 234

¹².abdu-Hamīd Muhammad Ibn-e-Bādaīs, Majālis-ul-Taḍkīr Min Kalām-il-Hakīm-il-Khabīr, (Matbū'āt-o-Wazārat-il-Shuūn-il-Dīniyyah, 1402 AH) 127.

¹³. Al-Qurān,24: 6-9

¹⁴.Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul- ṭalāq, Bāb-o-Idā 'arradha 'an Nafī-il-Walad,7/53, Hadīth No. 5305; Muslim, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Talāq, Bāb-o-Inqīdhā-e-'iddat-il-Mutawaffā'anhā Zojuhā Wa Ghaīrihā Biwadh'-il-Haml, 2/1137, Hadīth No. 1500

declared this verdict to ensure the lineage legacy and in consideration of doubts and assumption¹⁵.

It can be easily understood that the lineage aspect specifically for any abandoned child is most important to remove the social stigma from the personality of such a child. This is the point that remains attached to the abandoned child throughout his/her life which will remain attached to such child even after achieving the highest status in this worldly life and people will never pardon him but will indicate this aspect in his presence or absence.

Proof of Lineage through Claim

Islamic jurists have prescribed some modes for lineage proof which can be, claim, legal bedding, acknowledgment or appropriation, evidence, aesthetic, etc. The following discussion will focus on the lineage of the abandoned child, so that the other legal duties, responsibilities, and rights may be determined easily.

The claim is the attribution of a human being to himself for anything or its responsibility presently in another's custody¹⁶, here when it is observed concerning lineage, it will connote the claim of any person for the lineage of an abandoned child, and it will be considered the acknowledgement of the child's lineage.¹⁷ The purpose of such a claim is to prove the claimant's entitlement to the thing claimed. The important factor in the claim is that the claimant does not owe any evidence to his claim.¹⁸ All the jurists unanimously declare that if the claimant provides the proof for his claim, the lineage will be proved and the child will be handed over to him merely for his claim and evidence.¹⁹ But if the claimant does not provide any proof

¹⁵. Ahmad Bin 'alī Ibn-e-Hajar, Fath-ul-Bārī Sharah Sahīh Bukhārī, Tarqīm: Muhammad Fu'ād 'abdu'l Bāqī (Dār-ul-Ma'rifah, Bīrūt, 1379 AH) 9/444.

¹⁶. Sa'īd Sābiq, Fiqh-ul-Sunnah (Al-Fath-o-Lil I'lām-il-'arabī, Dimashq; Dār-ul-Fikr, Al-Qāhirah, 1412 AH) 3/28.

¹⁷. Abdul krīm Zaīdān, Al-Mufasssal Fī Ahkām-il-Mar'at-e-Wal Ba'it-il-Muslim Fī-il-Sharī'at-il-Islāmīyah (Mu'assasat-ul-Risālah, Bīrūt, 1415 AH) 9/428.

¹⁸. Zaīn Bin Ibrāhīm Ibn-e-Nujaīm, Al-Bahr-ul-Rāiq Sharh Kanz-ul-Daqāiq (Dār-ul-Ma'rifah, Bīrūt) 7/191.

¹⁹. Khalīl Bin Ishāq Al-Jundī, Mukhtasr Khalīl, Tahqīq: Ahmad Jād (Dār-ul-Hadīth, Al-Qāhirah, 1426 AH-2005 AD) 109; 'alāū-ul-Dīn Samarqandī, Tuhfat-ul-Fuqahā (Dār-ul-Kutub-il-'ilmīyah, Bīrūt, 1414 AH-1994 AD) 3/181; 'āhīa Bin Sharaf Al-Nawawī, Raodhat-ul-tālibīn Wa 'umda-ul-Muftīn, 414; 'abdullah Bin Ahmad Ibn-e-Qudāmah

supporting his claim. The matter of lineage and handing over the child to the claimant merely relying on the claim of sound mind major will be considered the disputed matter and will be dealt with technically. Jurists have discussed the matter in detail.

Lineage Linked With Religion

First of all, it is to be observed that the claimant is Muslim or Non-Muslim. If he is a free Muslim and fulfills all the conditions for a valid claim, lineage will be proved in his favor²⁰ and Ibn-e-Hazam argues for this opinion that “the births are known only by the word of fathers and mothers and same will be the case of lineages unless the lying is certain.”²¹ If the claimant is a nonbeliever, then jurists follow two different approaches:

- i. **Malikies, Zahiries**, and according to one opinion of **Hanafies and Shafies** think that such a claim will not be approved and lineage will not be declared in favor of this nonbeliever as the main condition for such person's claim is the provision of the valid evidence. ²²They argue for their opinion with the Quranic, Sunnah, and logical pieces of evidence.
- ii. As for as Qura'nic evidence is concern, Allah SWT declares the lineage is the matter of nature, as Allah SWT said:

فَطَرَتِ اللَّهُ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا²³

“Allah's handiwork according to the pattern on which He has made mankind”

The natural decision for the lineage matter in the situation where the parents are not known is that the child must be Muslim and must be handed over to a Muslim if the non-believe parentage is not proved.

Al-Muqaddasī, Al-Mughnī (Maktabat-ul-Qāhirah, Al- Qāhirah, 1338 AH-1968 AD) 6/125.

²⁰. Ibn-e-Qudāmah, Al-Mughnī, 6:125

²¹. alī Bin Ahmad Al-undalasī Ibn-e-Hazam, Al-Muhallā Bil Aāthār, Tahqīq: Dr. `abd-ul-Ghaffār Sulimān Al-Bandarī (Dār-ul-Kutub al-Elamiya, Bīrūt, 1408AH-1988AD) 8:276.

²². Khalīl Bin Ishāq Al-Jundī, Mukhtasr Khalīl, Tahqīq: Ahmad Jād (Dār-ul-Hadīth, al-Qāhirah, 1426AH-2005AD)109; Ibn-e-Hazam, Al-Muhallā Bil Aāthār, 8/276; Ibn-e-Qudāmah, Al-Mughnī, 6/125; ĩahīa Bin Sharaf Al-Nawawī, Al-Majmū' Sharh-ul-Muaḍḍab(Dār-ul-Fikr, Bīrūt)15/299; Muhammad Bin Ahmad Al-Dusūqī, Hashīat-ul-Dusūqī `la-al-Sharh al-Kabīr (Dār-ul-Fikr, Bīrūt)3/127.

²³. Al-Qurān,30: 30

- iii. Holy Prophet ﷺ has also declared the originality of lineage in accordance of the parents even in following the religions. He ﷺ said that:

مَا مِنْ مَوْلُودٍ إِلَّا يُولَدُ عَلَى الْفِطْرَةِ فَأَبَوَاهُ يُهَوِّدَانِهِ وَيُنَصِّرَانِهِ وَيُمَجِّسَانِهِ كَمَا تَنْتَجِ الْبَيْمَةُ بِبَيْمَةٍ
جَمْعَاءَ هَلْ تُجْسُونَ فِيهَا مِنْ جَدْعَاءَ²⁴

“No born is created to this true nature (Islam). It is his parents who make him a Jew or a Christian or a Magi quite as beasts produce their young with their limbs perfect. Do you see anything deficient in them?”

This tradition declares that the ends of all the children's matters are attached to the parents. The misery of the devil or happiness of paradise also relates initially to the parents who are to make the child a believer or nonbeliever and the lineage matter will also be settled through this criteria if the evidence is available otherwise his birth will be considered on Islam and he/she will not be handed over to any nonbeliever, so that he may not covert him/her to his religion and if the valid pieces of evidence are available, he will not be deprived of his child as he is the guardian and father of such child. But if he fails to prove the parentage his acknowledgement or claim will not be acceptable as it is not beneficial for the abandoned child. Although there may be worldly benefits for the child if handed over to the nonbeliever claimant, the permanent and long-life benefits are absent here. The nonbeliever's custody of the child will lead him to refuse Islam which will result in his entry to hell. So according to this viewpoint neither the abandoned child will be handed over to such a nonbeliever nor his lineage will be proved for him merely due to his claim and acknowledgment.

- iv. **Hanafi, Shafie** and according to the authentic opinion of the **Hanabali** school of thought, when any nonbeliever claims the lineage of the abandoned child and acknowledges him without providing any proof of his claim, the child will be attached to him and his claim and

²⁴. Muslim, Al-Jāmi' -ul-Sahīh, Kitāb-ul-Qadar, Bāb-o-Ma'nā Kullu Maūlūdin Yūladu 'lā-al-Fitrah Wa Hukm-o-Maūt-e- Atfāl-il-Kuffār Wa Atfāl-il-Muslimīn, 4/2047, Hadīth No. 2658

acknowledgment will be accepted.²⁵ Some jurists have declared that this claim will be accepted even after the death of an abandoned child²⁶. They consider nonbelievers equal to the Muslims in lineage proof, whatever the kind of proof may be. So if the acknowledgement and claim of the Muslim is considerable for the Muslim then why not for the Non-Muslim? Again they argue that consideration of Non-Muslim claims in proving the lineage is beneficial for the child due to the following two reasons:

- a. The child needs the lineage to admire and avoid shame. If this need is fulfilled even with infidel lineage, he will be free from all harm and this lineage will be better than living without parentage and being called illegitimate.
- b. When any person claims and ensures the preservation and satisfaction of daily needs of such child, will prove the benefit for this child²⁷ and when the child's benefit is proved by such lineage claim without any claim or evidence contrary to it, no reason is left to reject this claim nor any harm is possible for the child and such claims are usually accepted without any proof²⁸. So this claim will also be accepted and the lineage will be proved for the nonbeliever just for the welfare of the abandoned child.

The main focus of these two viewpoints is the welfare and preservation of children's benefits. As far as the first opinion is concerned, it focuses on the purification of the religion of abandoned children, and no doubt it is the strong objective that overcomes all other objectives and also they feel the reservation that if the lineage is declared for the nonbeliever, the child will automatically be converted to the religion of his nonbeliever declared father. The second opinion focuses on the worldly benefits and fulfillment of the child's daily needs and it has been declared that if the mother of the child is

²⁵. Muhammad Bin Ahmad Al-Sarkhasī, Al-Mabsūt (Dār-ul-Ma'rifah, Bīrūt)10/214; Al-Nawawī, Al-Majmū' Sharh-ul-Muwaḍḍab,15/299; Ibn-e-Qudāmah, Al-Mughnī, 6/124.

²⁶. Muhammad Bin Sālih Bin Muhammad Al-Athīmīn, Al-Sharh-ul-Mumtī' 'alā Zād-il-Mustaḥṣi' (Dār-o-Ibn-il-Jaūzī, 1428 AH) 9/535.

²⁷. Al-Sarkhasī, Al-Mabsūt, 10/214

²⁸. Abu Bakr Bin Mas'ūd Kāsānī, Badāi'-ul-Sanāi' (Maṭba'ah Sharīkt-ul-Maṭbū'āt-il-'ilmiyyah, Misr, 1327-1328 AH) 6/198.

Muslim or embraces Islam, the child will be declared Muslim also but his lineage will sustain towards his nonbeliever father. Jurists also declare that lineage can be proved and decided for a dhimmi and when the child is taken back from such dhimmi father before he attains the religious reasoning age, this process will be adopted to save his religious matter from any tempering.²⁹

In conclusion of the discussion, a **second opinion** may be preferred, keeping in view the child's benefits without any harm. Lineage issue is as important for every human as his religion and it is to save him from every sign of social stigma and for his future betterment. Here is this issue, though the lineage is being decided for the nonbeliever the child is not declared a nonbeliever. Also, every child is attached to his father considering every valid proof, doubt, or assumption, and its rejection after the acknowledgment or claim can only be accepted with valid proof and evidence³⁰. So an abandoned child can be linked to the nonbeliever's lineage through his acknowledgment and claim in the absence of any other claimant, keeping in view that the lineage is the social and legal need of every child to prove some liabilities and rights regarding the child and Shariah allows the prohibitions at the time of need, and this issue may be taken as need of the child.

Woman's Claim of Lineage

When the lineage claim by any man is proved this lineage will be confirmed and its consequences will be applicable. But if a woman claims the lineage, whether this claim will be considered or not, jurists are divided into three approaches to this matter.

First Approach: Malkisie, authentically Shafies, and Thaori and Abu Thaor from Hanafies think that merely relying on the claim of a women, lineage will not be approved regardless she is married or unmarried. But when a claim has been proved through pieces of evidence, it will be approved and the claim of the women will be accepted.³¹ This approach accepts a

²⁹. Muhammad Amīn Bin 'umar Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, (Dār-ul-Fikr, Bīrūt, 1412 AH-1992 AD) 4/270.

³⁰. Al-Sarkhasī, Al-Mabsūt, 17/100; Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, 6/122.

³¹. Mālik Bin Anas, Al-Mudaūūanah, 8/336; Muhammad Bin 'alī Bin Muhammad Haskafī, Al-Durr-ul-Muhtār (Dār-ul-Fikr, Bīrūt, 1386 AH) 4/272; Al-Nawawī, Al-

woman's claim but with the condition of its evidential proof and if not proved it will not be accepted.

This group argues for their opinion as narrated by Ibn-e-Muszir, that it is the consensus of all Islamic scholars that if any woman claims the lineage of any abandoned child, his claim or acknowledgment will not be accepted³². Moreover, the mere claim in such matters is considerable in the absence of any evidence and the child delivery proof is the matter which needs the midwife and many more necessary evidences, and in the absence of all these things the claim is weightless. So only the claim of the woman will not be considered the tool for proof of the matter, so her claim will be rejected for the lineage proof³³. Again the attachment of the child with any man's lineage is to save him from shame and social stigma as the community may not call him/her illegitimate, and if his lineage is approved for the unmarried woman, due to her claim, the sign of shame and social stigma will permanently be attached with this child which will be proved as long life curse in his favor and that is repugnant to the Shariah objectives (Taffuz-e-Nasl and Tahaffuz-e-Ismat), and it will be proved dangerous for the child rather than beneficial.³⁴ So keeping in view the Shariah objective, it will be better not to accept the claim of the woman for lineage of any abandoned child to save him from any harmful or shameful situation in his life.

Second Approach: Hambali's authentic approach, one of Shafies opinions, and Ashhab Maliki's approach is that if a woman claims the lineage of an abandoned child, he will be attached to her.³⁵ According to this approach, the woman's claim is considered to prove the lineage in her favor. The supporting evidence for this opinion is the narration narrated by Abu Hurairah (RAA): Allah's Apostle ﷺ said: "There were two women with

Majmū' Sharh-ul-Muaḍḍab, 15/304, Kamāl-ul-Dīn Muhammad Bin 'abd-ul-Wāhid Ibn-ul-Hummām, Fath-ul-Qadīr (Darul-Fikr, Bīrūt) 6/113; Ibn-e-Qudāmāh, Al-Mughnī, 6/124.

³². Abū Bakar Muhammad Bin Ibrāhīm Ibn-ul-Munḍir, Al-Ijmā' Tahqīq. Fuūād 'abdul Mun'im Ahmad (Dār-ul-Muslim Li-il-Nashr-e-Wal Taūzī', 1425 AH-2004 AD) 104.

³³. Al-Sarkhasī, Al-Mabsūt, 10/218; 'abdullah Bin Ahmad Ibn-e-Qudāmāh Al-Muqaddasī, Al-Kāfi (Dār-ul-Kutub-il-'ilmiyah, 1414 AH-1994 AD) 2/204; Al-Nawawī, Al-Majmū' Sharh-ul-Muaḍḍab, 15/304.

³⁴. Ibn-e-Qudāmāh, Al-Mughnī, 6/124.

³⁵. Ahmad Bin Idrīs Al-Qarāfi, Al-ḍakhīrah, Tahqīq: Muhammad Hajjī, Sa'id Al-'arab, Muhammad BūKhaizah (Dār-ul-Gharab-il-Islāmī, Bīrūt, 1994 AD) 9/131.

whom there were their two sons. A wolf came and took away the son of one of them. The lady said to her companion, the wolf has taken your son. The other said, but it has taken your son. So both of them sought the judgment of (the Prophet) David who judged that the boy should be given to the older lady. Then one of them went to (the Prophet) Solomon, son of David and informed him of the case. Solomon said, Give me a knife so that I may cut the child into two portions and give one half to each of you. The younger lady said, do not do so; may Allah bless you! He is her child. On that, he gave the child to the younger lady”³⁶. It can be observed through this tradition that Holy Prophet Solomon decided the matter in favor of the younger lady considering her claim and Imam Qartabi has presented this tradition for the opinion that a woman can claim the lineage of the abandoned child³⁷. The reason is that Islam owes all previous religious orders if not prohibited or changed and there is no change in this Salomon’s order, so it will be considered the order of Islam.

Jurists also logically argue for this opinion that the child is born due to both father and mother in legal marriage, here the lineage is confirmed. But if there is doubt or adultery intercourse, the matter will be decided with the woman's wordings, and in such cases, the lineage will be linked with the mother rather than the father³⁸. Here Imam Sarkhasi declares that if the evidence is required to prove the paternity, it is only to prove that the child was born on his bed and the same may be the case of the woman, so her claim will also be accepted to prove the lineage in her favor³⁹. This Prophecy tradition and logical arguments prove that the lineage can be linked with the woman observing her claim.

Third Approach: AHambali, a shape and the fatwa statement of Hanafis is that if such a woman is married and living with her family, her claim will be considered if her husband and family verify the matter and if

³⁶. Bukhārī, Al-Jāmi’-ul-Sahīh, Kitāb-ul-Farāidh, Bāb-o-Idā Idda’at-il-Maratu Ibban, 8/156, Hadīth No. 6769; Muslim, Al-Jāmi’-ul-Sahīh, KitābAl’Aīmān, Bāb-o-Baīān-e-Hāl-il-Aīmān Man Raghiba ‘an Abīh-e-Wa Huwaīa’lamu, 1/57, Hadīth No.63.

³⁷. Muhammad Bin Ahmad Al-Qurtubī, Al-Jāmi’ Li Ahkām-il-Qur’ān, Al-Qāhirah(Dār-ul-Kutub-il-Misriyyah, 1384AH-1964AD) 11/314.

³⁸. Ibn-e-Qudāmāh, Al-Mughnī, 6/124; Ibn-e-Qudāmāh Al-Muqaddasī, Al-Kāfi, 2/252; Al-Nawawī, Al-Majmū’ Sharh-ul-Muaddab, 15/303; Al-Qarāfi, Al-ḍakhīrah, 9/135.

³⁹. Al-Mabsūt, 17/100.

she is in wedlock with any man and claims the lineage of the abandoned child, her claim and acknowledgment will be considered and lineage of the child will be linked to her⁴⁰. The main argument for this approach is that if the married woman's claim is accepted, it will cause harm to the husband as well as his family. The harm to the husband is that **firstly** she is converting the right from her husband to any unknown person, so her statement will not be accepted without any proof. **Secondly**, her claim leads to adultery, which is shameful for the husband who has the legal bedding right to this woman and she is offering it to any unauthorized person, which harms the reputation of her husband as well as her family. Therefore her statement will not be accepted and the lineage will not be proved for her as well.

On the other hand, if the woman is unmarried and claims the lineage of any abandoned, he will be linked to such woman accepting her claim and no harm is expected to any other person due to her claim and she is bearing the liability of her statement. Critical analysis of the arguments clears that the child will be handed over to such woman and the lineage of the child will remain unknown to her as well as to the public at large. The reason for this result is that the lineage relates to the men, not the women, and when the man (father) is unknown then how it may be linked to the unauthorized person? Surely the claim of a married woman is debatable but the unmarried woman's claim will be weighted and lineage will be linked to her for the child's safety and recognition.

Pluralism in Lineage Supplication

If two persons claim the lineage of the abandoned child, how the matter will be dealt with? Secondly, these claimants may be more men or women, so they will be dealt with differently.

1. If the claimants are more men, then the Islamic jurists are divided into two different approaches is this matter.

First Approach: If any claimant provides proof of his claim, the matter will be decided in his favor due to provision of the valid proof⁴¹. This

⁴⁰. Ibn-e-Qudāmah Al-Muqaddasī, Al-Kāfī, 2/252; Ibn-e-Qudāmah, Al-Mughnī, 6/124.

⁴¹. Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, 4/272; Abū Ishāq Ibrāhīm Bin 'alī Al-Shīrāzī, Al-Muḥaḍḍab Fī Fiqh-il-Imām Al-Shafī'ī (Dār-ul-Kutub-il-'ilmiyyah, Bīrūt) 1/573; 'alī Bin Sulāimān Al-Mardāwi, Al-Insāf Fī Ma'rifat-il-Rājih

proof must consist of the evidence of two major and sound mind men or a man and two major women of sound mind⁴². Lineage according to this approach will be declared for the claimant and the child will handed over to him considering him the father as well as the guardian of the child, because the evidence is solid proof to prove the claim while nonprovision of such evidence will create doubts in the matter.

Second Approach: If two men claim the lineage of any abandoned child and no one has any proof for his claim, then this matter can be dealt with in any of two aspects.

First Aspect: If two men claim the lineage of any abandoned child and both of them fail to prove their claim then the following steps may be taken to prefer any of these claimants.

- i. The matter can be resolved on a **first come first** basis. The man who picks the abandoned child will be declared his guardian and lineage will be decided in his favor. Hanafi and according to one Hambali opinion, jurists declare that if any of the contending claimants picks the abandoned child first and also claims his lineage in favor of this child due to his possession and claim.⁴³ If anyone else claims for the lineage of such a child, his claim will be rejected if not proved by valid pieces of evidence. If he proves his claim through evidence then the decision will be reviewed and decided on merit.

Shafiet's opinion is that the mere possession or picking up the child first is not proof of lineage.⁴⁴ Sharbeeni declares in such a situation, that the physiognomic will observe the similarity between the abandoned child and his claimant and if they are similar to each other the lineage will be declared in favor of the claimant otherwise

Min-al-Khilāf (Dār-o-Iḥiā-il-Turāth-il-`arabī, Bīrūt,1374AH-1955AD) 6/433; Ibn-e-Qudāmāh, Al-Mughnī, 6/124.

⁴². Abdul krīm Zaīdān, Al-Mufasssal Fī Ahkām-il-Marāt-e-Wal Baīt-il-Muslim Fī-il-Sharī'at-il-Islamīyah (Muūassasat-ul-Risālah, Bīrūt,1415 AH) 9/404.

⁴³. Kāsānī, Badāi'-ul-Sanāi', 6/252; Al-Mardāwī, Al-Insāf Fī Ma`rifat-il-Rājih Min-al-Khilāf, 4/43

⁴⁴. Zakariyā Bin Muhammad Bin Ahmad Al-Ansārī, Fath-ul-Wahhāb, (Dār-ul-'ilm, Bīrūt, 1418 AH)1/458.

his claim will be rejected⁴⁵ and the child will be taken back from him. This issue can be easily resolved in the contemporary era through DNA laboratory tests, and if it matches, the claim will be accepted and the lineage issue will be resolved.

- ii. Jurists resolve the issue considering the religion of Islam, though juristic approaches are different in this regard. Hanafies declare that the Muslim will be preferred for lineage in such a situation, but Malikie, Shafiees, and Hambalies think that Muslims and Non-Muslim will be treated equally in this position and the matter will be decided on merit. Hanafies argue for their opinion that if such a child is attached to Muslims, it will be beneficial to him in this world as well as in the life hereinafter. So for a better future, it is better to declare his lineage in favor of a Muslim, so that he/she may grow up with Islamic beliefs and ethics⁴⁶ and if attached to the nonbeliever, he may be away from Islam and convert to any other religion.

Malikies, Shafiees, and Hambalies argue that if the believer or nonbeliever claims the lineage of such a child individually, their separate claims will be entertained. If they are equal in such a claim then why they are not treated equally in their collective claim? Then the claim of any of the claimants may be preferred through physiognomic opinion observing the similarity between the child and claimant. If it is proven, the lineage will be proved and if not the claim will be rejected⁴⁷ and the case will be decided on merit pieces of evidence.

Keeping in view the above discussion it can be easily decided that the majority opinion seems the right and better opinion and according to the Qura'ni order that:

⁴⁵. Muhammad Bin Muhammad Khaṭīb Al-Sherbīnī, *Mughnī-ul-Muhtāj Ilā Ma'rifat-e-Ma'ānī Alfāz-il-Minhāj* (Dār-ul-Kutub-il-'ilmiyyah, Bīrūt, 1415AH-1994AD) 2/428.

⁴⁶. Kāsānī, *Badāi'-ul-Sanāi'*, 6/199; Samarqandī, *Tuhfat-ul-Fuqahā*, 3/355.

⁴⁷. Al-Nawawī, *Raūdhāt-ul-ṭālibīn Wa 'umda-ul-Muftīn*, 5/419; Ibrāhīm Bin Muhammad Ibn-ul-Muflih, *Al-Mubda' Fi Sharh-il-Muqana'* (Dār-ul-Kutub-il-'ilmiyyah, Bīrūt, 1418AH-1997AD) 5/306; Khaṭīb Al-Sherbīnī, *Mughnī-ul-Muhtāj Ilā Ma'rifat-e-Ma'ānī Alfāz-il-Minhāj*, 2/428; Al-Qarāfi, *Al-ḍakhīrah*, 9/136.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ ٱلْأَ تَعْدِلُوا۟ ۚ اْعْدِلُوا۟ هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا۟ اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌۢ بِمَا تَعْمَلُونَ⁴⁸

“O ye who believe! Stand out firmly for God as witnesses to fair dealing and let not hatred of others to you make your swerve to wrong and depart from justice. Be just: that is next to Piety: and fear God for God is well-acquainted with all that ye do.”

So the matter will be decided according to the proof of claim, whether it is in favor of a Muslim or a non-Muslim, and it is a judicial matter so it must be decided to provide justice to the righteous person.

Third Approach: If two or more free persons claim the lineage of any abandoned child and any of them tells a sign for its identification and that sign has been observed on the child’s body, will the lineage be decided in his favor merely by telling the body sign or not? Hanafies decide that the claim of a person prescribing the sign will be accepted if the sign is verified. Such claimants will be preferred to others⁴⁹ as the Qur’an has considered and preferred. Allah SWT has narrated the story of Prophet Yusuf accepting the claim and considering the sign prescribed by a child:

وَإِنْ كَانَ قَمِيصُهُ قُدَّ مِنْ دُبُرٍ فَكَذَبَتْ وَهُوَ مِنَ الصَّٰدِقِينَ-وَشَهِدَ شَٰهِدٌ مِّنْ أَهْلِهَا إِنْ كَانَ قَمِيصُهُ قُدَّ مِنْ قُبُلٍ فَصَدَقَتْ وَهُوَ مِنَ الْكَٰذِبِينَ . فَلَمَّا رَأَىٰ قَمِيصَهُ قُدَّ مِنْ دُبُرٍ قَالَ إِنَّهُ مِّنْ كَيِّدِكُنَّ ۖ إِنَّ كَيْدَكُنَّ عَظِيمٌ⁵⁰

“And one her household saw (this) and bore witness, (thus): “If it be that his shirt is rent from the front, then is her tale true, and he is a liar! But if it be that his shirt is torn from the back, then is she the liar, and he is telling the truth! So when he saw his shirt,-that it was torn at the back,-(Her husband) said: Behold! It is a snare of you women! Truly, mighty is your snare!”

Here it can be observed that the Qur’an declared Prophet Yusuf innocent pointing out the argument of a child and proving it as documentary evidence that she pulled him to herself and he tried to save himself from her.

⁴⁸ . Al-Qurān, 5: 8

⁴⁹ . Kāsānī, Badāi’-ul-Sanāi’, 6/199; Abū Bakar ‘alāū-ul-Dīn Samarqandī, Tuhfat-ul-Fuqahā’ (Dār-ul-Kutub-il-‘ilmiyyah, Bīrūt, 1414AH-1994AD) 3/355; Ibn-e-‘ābidīn, Radd-ul-Muhtār ‘alā-al-Durr-il-Mukhtār, 4/272.

⁵⁰ . Al-Qurān, 12: 26-28

Ibn-Qayyam has preferred this opinion and narrated it as the opinion of Imam Ahmad. He has applied the principle of analogy and considered it just a fallen lost thing and here the abandoned child and the child are the same.⁵¹ Also, Bukhari narrates a tradition that:

“A man asked the Prophet about the picking up of a "Luqata" (fallen lost thing). The Prophet ﷺ replied, "Recognize and remember its tying material and its container, and make public announcement (about it) for one year, then utilize it but give it to its owner if he comes." Then the person asked about the lost camel. On that, the Prophet ﷺ got angry and his cheeks or his face became red and he said, "You have no concern with it as it has its water container and its feet and it will reach water, and eat (the leaves) of trees till its owner finds it." The man then asked about the lost sheep. The Prophet ﷺ replied, "It is either for you, for your brother (another person), or the wolf."⁵²

So the signs must be considered to decide the lineage matter so that it may be winded up observing the judicial requirements.

2. If the claimants are two women and any of them provides the evidential proof for her claim, then Sahfies declares the she will be entitled to the child and if both of them fail to provide the evidence, the child will be presented to the physiognomic and the matter will be decided according to his expert opinion⁵³. When the matter is decided in favor of any woman even through evidence or physiognomic expert opinion, the lineage will also be decided for such woman and her husband and according to Hambalies, such matter will dealt with the same as the case of the conflict of claims between two men through physiognomic expert opinion⁵⁴. According to Sahibain amongst Hanafies, if none of them provides proof of her claim, their claim will not be accepted and Imam

⁵¹. Muhammad Bin Abī Bakr Ibn-e-Qaṭīm, Al-ṭuruq-ul-Hikmiyah (Matba'at-ul-Madnī, Al-Qāhira) 312.

⁵². Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-'ilm, Bāb-ul-Ghadhab Fil Mao'izat-e- Wal Ta'līm-e-Idā Raā Mā īakrahu, 1/30, Hadīth No. 91; Muslim, Al-Jame-ul-Sahih, Kitāb-ul-Luqtah, 5/135, Hadīth No. 1722.

⁵³. Al-Nawawī, Raūdhāt-ul- ṭālibīn Wa 'umda-ul-Muftīn, 5/419.

⁵⁴. Ibn-e-Qudāmah, Al-Mughnī, 6/128; Ibn-e-Qudāmah Al-Muqaddasī, Al-Kāfī, 2/253.

Abu Hanifa opposes this opinion.⁵⁵ He says that the child will be handed over to both of the women and they will be considered trustees for the child the reason for taking this decision is the absence of evidence to prove the claim, and both of the claimants are being declared responsible to look after the child to preserve the rights of abandoned in dispute.

3. **If the claims are equal none of the claimants could prove his claim and also there is no clear evidence to prove any claim**, then the ruling varies depending on the following plaintiff's situation.
4. **If the plaintiffs are two men**, then Hanafies declare that the child will be declared the son of both the plaintiffs considering them equal in their claim, but no one will be preferred in lineage.⁵⁶ Both of the claimants will look after the child's matters and will care for him honestly. Hambalies agree with the Hanafies' viewpoint but they declare that a mere claim will not be sufficient for such a decision but the recommendation of the physiognomic expert opinion is necessary to take this step. Abu Thaor also agrees on this point. The supportive evidence is the decision of Caliph Umar about a child born as the result of intercourse of two men with a woman in her purity period that the child belongs to both of the men and this decision was taken with the recommendations of a physiognomic. Sha`bi has narrated the statement Ali in this case that both are his fathers and he will inherit them and they both will inherit him. So the lineage of both of the men will sustain such a child and if any of them dies, his lineage will not be removed.<sup>57</sup> Shafi`is on the other hand state that lineage will not be declared for more than one person and Malkies also agree with this opinion.⁵⁸ In such a situation, the case will be referred to the physiognomy and will be acted upon its preference and if physiognomy recommends it for two persons, such recommendations will be rejected as the lineage is proved only for one man as declared in Holy Qur'an:

⁵⁵. Kāsānī, Badāi'-ul-Sanāi', 6/200.

⁵⁶. Ibid

⁵⁷. Ibn-e-Qudāmah, Al-Mughnī, 6/120-121.

⁵⁸. Muhammad Bin Ahmad Ibn-e-Rushd, Bidāiat-ul-Mujtahid Wa Nihāiat-ul-Muqtasid, (Dār-ul-Hadīth, Al Qāhirah, 1425AH-2004AD) 4: 143

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ⁵⁹

“O mankind! We created you from a single (pair) of a male and female”.

So according to this opinion, the child will be left to grow and after attaining his age of majority, he will be given the option to attach himself with any of these men, and whoever he opts to live with by his affection, will be declared his father and the lineage will be attached with him. A decision of the same nature was taken by Pious Caliph Umar when two men claimed a child; he called the physiognomy and asked him to declare any one of them his guardian.⁶⁰ Ibn-e-Qayyam adds an argument that it is the nature that the child will have only one father and if he is attached to two fathers, it will be considered the Qadhaf. So is the reason that the people will be called on the day of judgment with the title of so and so and the son of so and so, and this is the treachery of so and so, the son of so and so. It is never narrated that someone will be called with the lineage of two men⁶¹. Ibn-e-Qudamah counters the argumentations of Shafi`is in rejection of Umar's decision that he may have omitted it because he did not trust that physiognomy direction or any other ground and it does not lead to the wrongfulness of the opinion of the partnership of two men in lineage of a child⁶².

5. If two women claim the lineage of an abandoned child, then Hanfies declare that it will be attached to both of the women because the cause of lineage here is the claim, which is being made by both of them. Here the lineage proof is not linked with the birth, though it is the real element for this purpose, and not proved here but the ground is only a claim which is being found from both sides, so the lineage will be declared for both of these women⁶³. While Hambalies and other jurists declare that the lineage cannot be declared for two women as both can't give birth to one child, it is impossible to accept the claim of the women younger than the abandoned of his age fellows. So it will be attached to any of the

⁵⁹. Al-Qurān, 49: 13

⁶⁰. Al-Nawawī, Raūdhāt-ul- ṭālibīn Wa `umda-ul-Muftīn, 5/419

⁶¹. Muhammad Bin Abī Bakr Ibn-e-Qaīām, Zād-ul-Ma`ād (Dār-ul-Kutub-il-'Ilmiyah) 4/ 165.

⁶². Ibn-e-Qudāmah, Al-Mughnī, 6/117.

⁶³. Kāsānī, Badāi'-ul-Sanāi', 6/200.

claimants due to unavailability of the preference⁶⁴. Keeping view the above-mentioned circumstances, it can be easily understood that the pluralism of the claim for the lineage of an abandoned child may be from two men or two women, and the case will be decided according to the strong arguments, otherwise, it will be complicated for the proper decision and will lead to the juristic contentions.

Conclusion:

The theme of the research is that the lineage can be proved through the claim whether it is by a man or a woman and by a Muslim or a Non-Muslim but after investigating the circumstantial as well as the present technological evidence. In the case of pluralism in claims Islamic jurists debate the matter and the main point of the discussion is that all of them consider the welfare of the abandoned children as well as Shariah rules and regulations just to save the child from any curse or social stigma and to protect the rights of such child. This discussion is beneficial for the protection as well as insurance of satisfaction of daily needs of abandoned children.

Results

1. Lineages prove the social as well as the religious needs of every child.
2. The solution to this problem ensures the satisfaction of the daily needs of the abandoned child and the protection of his/her legal and human rights.
3. Some Jurists accept the claim of the nonbeliever if he satisfies the community through evidence for his claim.
4. The claim of the married woman will not be accepted provided that she lives with her husband and he avails his conjugal right with that woman.
5. If two men claim the lineage then documentary and circumstantial evidence may be analyzed and laboratory tests and other analyzing tools such as the observation of similarity between the claimant and the child may practiced to conclude.

⁶⁴. Ibn-e-Qudāmah Al-Muqaddasī, Al-Kāfī, 2/253; Mansūr Bin Yūnus Al-Bahūtī, Kashshāf-ul-Qinā' (Dār-ul-Fikr, Dār 'ālam-il-Kutub, Bīrūt)4/226; Ibn-e-Qudāmah, Al-Mughnī, 6/125.

6. In the case of more women's claims, some jurists say the lineage will be linked with both of them and they will mutually care for the child and after he attains the puberty age he will be given the option to attach himself to any of these claimants women. But the majority of the jurists don't allow this process and the same is the condition with pluralism of the claim by two men.
7. The main focus of the jurists in their discussion about this point is the welfare of the abandoned child and to save from any social and human stigma, so that he or she may lead a respectable life.



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