Journal of Law & Social Studies (JLSS)
Volume 4, Issue 2, pp 298-305
www.advancelrf.org

The Impact and Evidentiary Value of DNA Technology in Paternity Disputes with Special Reference to Pakistan & India

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Abstract

This paper underlines that DNA technology is globally considered a useful and effective forensic tool in paternity disputes and obtaining scientific accuracy. More significantly, the judges and the superior courts of developing countries have relied on the evidentiary value of DNA testing. Nonetheless, they have expressed significant hesitation in approving DNA tests or accepting DNA evidence in some cases, citing legal or constitutional prohibitions as justifications. Because there is a lack of clear policies and efficient procedures, legality of DNA technology is generally determined by judicial discretion. However, contrasting Supreme Court rulings in Pakistan and India have caused doubt and misunderstanding concerning the significance of DNA evidence is used in civil and criminal matters. In addition, it contains best possible legislative reforms by applying DNA technology as a forensic tool to address the prevailing paternity issues and the identification of offenders.

Keywords: DNA Technology, Paternity Issues, DNA Testing, Scientific accuracy, Judicial discretion and Right to Privacy.

Introduction

Each person's genetic blueprint could be DNA or polymer. Everyone appears to have a different chemical composition of DNA within their cells. Except for genetically identical twins, this may be the only way to distinguish one from the other. In the event of the discovery of biological evidence at a crime scene, stated scientific breakthroughs are often used to identify offenders with miraculous accuracy. At the same time, it is not uncommon for it to exonerate people who have been falsely charged or convicted of a crime. As a result, Technology based on DNA is thought to be the most effective method for discovering the truth.

Because of its ability to determine the identity of the child's parents or grandparents with a high degree of accuracy, DNA profiling has also been used to test the father. The range of applications for Such data covers a wide range of topics, including intra-familial conflicts, for rape victims, Social Security, and inheritance difficulties. Governments that want to limit immigration to family reunions need it, and it's currently used in some countries.

Furthermore, this modern technology of DNA is widely used in civil matters, Disputes over parentage or motherhood, baby-exchanging lawsuits, succession disputes, and maintenance claims are examples of these types of cases, divorce problems, to name a few. In the event of a paternity dispute, in a short amount of time, a simple comparison of DNA from the child's liquid bodily fluids or body tissues with those of his father and mother can give incontrovertible proof of biological parenting.

DNA in Easy Terms

DNA determines eye colour, hair colour, height, bone strength, and many other human and animal traits, such as bone strength. DNA has the appearance of a long yet thin string. Normally, A 1-foot strand of DNA is normally packed into an area the size of a cube with 1/millionth-inch side lengths. Only because DNA is an extremely thin string is it conceivable.

Our DNA is in every cell of our body. A cell is a cube with sides 1/millionth inch long. Muscle, brain, liver, blood, and sperm cells are examples of cells. A DNA sample is the same as every other cell in the body. Our red blood cells lack DNA. Our blood is typed by DNA in white blood cells. The body, as well as plants, animals, and pathogens, relies on DNA.

DNA (Deoxyribonucleic Acid) is the genetic information carrier within the cell in a nutshell. It may be present in both the nucleus and mitochondria, which are organelles embedded in the cytoplasm of the cell. and whose DNA is handed down the maternal line, making it more valuable in DNA research on ancient materials such as bone.

Meaning of Paternity

The term Paternity is the legal recognition of a child's father's identity. It is a popular misconception that having a father's name on a child's birth certificate establishes paternity. “Under common law, a child born to a married woman is assumed to be her husband's child.”

Examination of DNA evidence cases decided by Pakistani courts. There are two streams of cases that have come to light. One category of cases involves the paternity/legitimacy of a child, while the other involves sexual offenses, rape, and murder trials.

Art. 128 of Qanoon-e-Shahadat

Article 128 of Qanun-e-Shahadat,1984 specifies that if a kid is born to a married woman during the course of a lawful marriage or within six lunar months after its dissolution, it is irrefutable proof that the child is the mother's legitimate child, provided the spouse had no access to each other at the time of conception. “Child follows the bed” under Muslim law, paternity of the child is attributed to the person who is responsible for its conception after his marriage with the child’s mother.

In the Case of Legitimacy, the Mother's Testimony is Adequate

The case of M. Arshad v Mst. Sughran Bibi etc, the father refused to accept the kid as his son and requested that the child's genetic composition must examined from the court. The court, however, turned down the request for DNA testing. The High Court usually accepted the child's legitimacy

notwithstanding the lack of strong, solid evidence to the contrary. In the case of Nazir Fatima v. Ghulam Fatima and others, there is no evidence on the record to substantiate the petitioner's ludicrous and scandalous contention that the kid is illegitimate. In limine, a petition of the constitution was denied.

The Court looked at the record in another case and decided that there was persuasive and substantial evidence of the couples' marriage and that the lower courts had rightly established that they were lawfully married. The petitioner cast doubt on the legality of his daughter and the reality of their marriage without providing adequate evidence. He couldn't prove the girl was born after the 'divorce' or that the responder had committed adultery. Her legal standing, as well as her fatherhood, could not be questioned because the daughter was born six months after the marriage and before the second year of divorce. The petitioner's plea, the Court said, was motivated by his wish to avoid being liable for his daughter's care.

In the matter of Khizar v ADJ, the lower courts accepted a decree for the maintenance of a son. At the time of the litigation, the petitioner desired a DNA test to prove the son's paternity, eleven years after he was born. For this reason, it was decided that a DNA test could not be performed, since there was no solid evidence to disprove his authenticity. There is a risk that a kid might be stigmatized for life if a mistake is made in the DNA test, which is why the High Court raised concern about the lack of qualified persons and the proper scientific infrastructure in Pakistan to conduct DNA testing.

The judicial policy of discouraging DNA tests in paternity cases filed by fathers appears to be addressed now, as the instances illustrate. Section 128 of Qanoon e Shahadat 1984 does not accept any evidence in such circumstances and stipulates that the birth of the marriage and within a defined period after dismissal are adequate evidence of legitimacy, which prevents any attempts to question the legitimacy of children.

In a civil case, the paternal uncle contested paternity, not the father. The father wasn't living when the matter went to court. Due to his role in the deceased's inheritance, the uncle decided to challenge the son's paternity. The court declined a DNA test. The lawsuit was dismissed with costs because it was frivolous and lacked merit. First, DNA testing cannot be regularly undertaken based on baseless allegations; second, the petitioner had not supplied cogent and trustworthy evidence necessitating a DNA test; and third, the parties' permission was not available. Aside from infringing on personal liberty, the Court recognized that routinely ordering someone to take a DNA test might have significant consequences. It cannot be encouraged or handled lightly to throw doubt on an individual's paternity.

In another case, when a mother and her child applied to the High Court for a DNA test to find out how they were related to a person who had died many years before, as proof of their claim, they handed them a “Nikahnama” (marriage registration certificate). The family of the dead brought a jactitation of marriage suit in Family Court, claiming that the deceased was insane and had not married the petitioner. The court found in favor of the credibility of evidence in the complaint about jactitation and affirmed the ruling on appeal. Later, the petitioner went to court and requested that a DNA test be performed on the deceased's body. No need to reopen a case by authorizing genetic testing because lower courts had previously determined based on genetic evidence.

In Noor Ali v S.P. Quetta, a teenage girl's paternity was decided. The parties claiming to be the parents of a juvenile girl realized that a DNA test may solve the issue. Blood samples of petitioners and respondents were sent to the Centre for Applied Biology, Ministry of Science and Technology, Lahore. As per report of Dr. Zahoor Ahmad, the Respondents are the real parents of minor Rafia. Therefore, they have custody of their daughter. Petitioners failed to show that respondents had gotten

a favorable DNA result because of their influence. It was apparent that the petitioners, knowing well that they were not the little girl's parents, pretended to be her parents and made fraudulent declarations before the court.

In Ghazala Tehsin Zohra case, Supreme Court explored the use of DNA fingerprinting to prove paternity under Article 128 Qanoon e Shahadat. Two children born at a wedding disputed their legitimacy and invited DNA testing. A DNA test can be used to determine the legitimacy of children when their mother's unchastity is questioned.

While usually brought up to question legitimacy/paternity, DNA test was sought in this matter. Regardless of the distinctions, the outcome was the same: the test was not approved in each case. Article 128 of the Qanoon e Shahadat, bans introduction of any evidence seeking to undermine the validity presumption Aside from the regulation, authorizing a DNA test is difficult due to Pakistan's adversarial legal system, which requires parties to substantiate their claims with proof.

DNA evidence in paternity cases has been outlawed by Pakistan's Supreme Court on several occasions because the court believes it serves the public good more than the interests of any one individual. There is a long-standing theological foundation to this article, the Supreme Court further recognized. Thus, DNA evidence in paternity trials remains inadmissible.

Muslims place a high value on paternity, seeing it as the foundation of their whole family system. Since it affects kinship borders as well as other entitlements and claims like inheritance rights. Islamic paternity rules are difficult to modify since they are founded on strong textual foundations in both the Quran and the Prophet's Sunnah. The existence of a legal sexual connection establishes paternity in Islamic law. “When the shariah establishes fatherhood via marriage or previous slave ownership of a woman, it is considered "licit" in Islamic law”.

The Hadood Laws Have Their Own Evidence Standard in Islam

When one spouse accuses the other of adultery or infidelity, the legal situation falls under the scope of Surah Al Noor Ayats No. 6 to 9. The wedding is dissolved in both cases where the wife swears, as prescribed, or the husband, so because it's a given that they won't be able to co-exist peacefully. Ayah No. 4 of Surah Al-Noor states that the breaking of a wedding is a severe penalty since it damages the house and establishes a bad reputation for both Zina and her accusers.

DNA test might also be a crucial piece of evidence for a husband determining a Zina complaint against his wife and using it to justify taking the swear given in Surat Al-Noor, that could lead to wedding being broken. DNA test might also be used to confirm a baby's legitimacy for a variety of other reasons. As a result, its importance and evidential worth are adequate, but not in matters involving Zina, which is penalized under the Hadood Laws and these laws are unique in that they establish their own standard of proof.

Indian Perspective

In the paternity cases, The Indian Supreme Court has developed a distinctive approach to DNA evidence. There are legislative presumptions that can be used to identify a child's paternity, such as those found in Section 112 of the Indian Evidence Act 1872. In cases when no presumption of parentage exists, DNA testing can be utilized to establish proof of the child's biological parentage. DNA paternity testing can be requested by a man to show the deception about his paternity and seek compensation for his suffering and pecuniary losses as a result of it in court actions against the child's mother.

Parental DNA testing can prove a person's biological link to a deceased person and support a claim for succession. A blood sample for DNA analysis is required to resolve legal paternity issues. In Goutam Kundu's case, the Supreme Court clarifies the use of blood grouping tests to determine paternity in criminal and civil matters. In this case, a woman sought support for herself and her kid under Section 125 of the CrPC.

Meanwhile, the petitioner argued that he was not the father of the kid and requested the child's blood test to prove it. After the magistrate dismissed the case, a revision was filed in Calcutta High Court, and Calcutta High Court was informed of a revision request. If a kid is born during a recognized marriage, the Court held, in accordance with Sec 112 of the Evidence Act of India It is irrefutable evidence of legal marriage. There was a criminal appeal filed in the Indian Supreme Court upon the dismissal of criminal revision. The Court ruled out that a father cannot be forced to submit to a DNA test by a court order.

Muhammad Ghose v Begum Noor Nisa, a case quite like this one, also discusses this fact. Under Section 125 of the CrPC, the petitioner sought maintenance for the child, but the father refused paternity. The High Court of Andhra Pradesh ruled that the DNA test cannot be supported, in the case of the learned family court-ordered one. Obtaining DNA evidence to prove paternity is the primary purpose of a blood test in a paternity case. Many types of crimes can be solved with the use of a DNA test. If the other party doesn't object or agree, it shouldn't be left up to them.

The main issue in Shri Benarasi Dass v Mrs.Teeku Dutta and Others was whether a directive for a DNA test can be provided in an Indian Succession Act 1925 for awarding a succession certificate.

It has been observed as follows:

First, DNA tests are not to be ordered routinely and only in meritorious circumstances. This instance is not one of them.

Second, the Indian Evidence Act of 1872 provides that a kid born in legal marriage is legitimate and that both parents had access. It takes more than a simple majority to overturn this presumption.

Third, it is remembered that the Sec 112 of the Evidence Act of India, was written before recent scientific developments in DNA and RNA tests. A real DNA test's results are assumed to be correct. It doesn't matter if a DNA test shows that a child was not born to the husband, even though the husband and his wife were living together at the time of conception. This would be irrefutable evidence in court.

In another case Bhabani v. Secretary Orissa State & etc., The Court noted that using DNA in a paternity case is a complex and sensitive matter. One position is that if contemporary science offers means for identifying a child's paternity, they should be used whenever necessary. The alternative viewpoint is that the court should avoid employing scientific advancements and tools that may not only violate an individual's right to privacy. Contradictions between a person's privacy rights and the court's duty to discover the truth should be resolved by balancing interests and determining if DNA is required for a reasonable finding. When a court receives a request for DNA, it should not be done routinely or in a routine manner. The court must weigh the benefits and downsides of such an order, as well as the eminent need test, which examines whether the court could acquire the facts without adopting this test.

In the case of Kamti Devi v Poshi Ram, the Supreme Court again demonstrated reluctance to admit DNA evidence in paternity cases. Despite acknowledging the scientific veracity of DNA evidence, the Supreme Court refused to use it in this instance due to public policy concerns.

In Sharda v Dharmpal, the Supreme Court expressed strong support for the usefulness and admissibility of DNA evidence in marital proceedings. Prior to this case, the Supreme Court decided in favor of Goutam Kundu, saying that a person should not be compelled to submit to a blood test, even if doing so is necessary for a fair decision of the case. However, the Supreme Court's conservative stance is changing, as indicated in this case, in which the court specifically stated:

a) A marital court has the authority to compel someone to take a medical examination.
b) The court's decision would not infringe on the right to personal freedom guaranteed by Art.21 of the Indian Constitution.
c) The judge should use this power if the petitioner has a strong prima facie case and enough proof. If the respondent refuses to be examined, the court may make a negative inference against him.

Conclusion

Every well-established concept of law pertaining to paternity dispute cases is seriously challenged by the emergence of DNA technology. Many developed countries have had to amend their laws and legal doctrines in order to make use of this technology in complex paternity cases, and instead of that, new specific statutes have been enacted to achieve this purpose. As well as creating difficult legal and societal issues, such as whether the use of DNA testing in paternity cases infringed on the privacy of the person whose DNA samples were obtained.

The child is illegitimate if DNA tests show that someone is not the child's father. and his or her mother's life is humiliated, causing an additional legal and social dilemma. Achieving a fair balance between the interests of the innocent husband and the illegitimate kid will be extremely difficult in such a situation, both in the legislative and judicial branches of government. Illegitimate children's rights are protected and recognized in many countries where this technology has already been used, and legislation has been enacted to address this issue.

Indian Evidence (Amendment) Bill 2003 was designed to address Supreme Court's concerns. The bill provides for paternity DNA testing and defines a match and a mismatch. For compelling confirmation that an individual is not the father if they do not match. but if they do, the debate continues. The modified section 112 was recommended at the suggestion of the Law Commission of India in its 185th report.

The sole law dealing with paternity concerns in Pakistan is Article 128 of the Qanoon e Shahadat Order 1984, and this law is antiquated in many respects. So, it is a dire need to create a flawless DNA law, or a new chapter in the Qanoon e Shahadat Order 1984 should be included to resolve the paternity issues in our country to maintain a constant fruitful interaction between science and law.

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