

## CHAPTER 3

### MUSLIM LAW

#### ACKNOWLEDGEMENT OF PATERNITY (IQRAR)

**Legitimacy is a status which results from certain facts but legitimation is a process which creates a status which did not exist before.**

In a 'proper sense there is no legitimation under Muslim law. In fact an acknowledgement is a declaration of legitimacy and it does not refer to legitimation. Hence an illegitimate cannot be made legitimate under Muslim law.

#### **Legitimation per subsequense matrimoniam**

(Legitimation by subsequent marriage of the parents of the child) of Roman law is not known to Muslim law. Iqarar: But Muslim law recognises Iqarar ( Acknowledgement of paternity) It has three incidents:'. (i) Unknown paternity (ii) Child must not be illegitimate, (iii) There must be nothing to rebut presumption.

(i) **Unknown paternity:** That is, if the paternity of the child is not certain.

The leading case: **Mohammad Allahabad Vs. Mohammad Ismail.**

A claiming to be the eldest son of G brought a suit against Ismail and his 3 sisters for his rights in certain villages. Ismail and his 3 sisters were born to Mothi Begum after her marriage to G. But A was born to her at a time when it was unknown, who-the father of A was. G during his life time had acknowledged A as his legitimate son. It was held :

(a) That there was no proof of paternity of A.

(b) That it was not proved that A was by illicit intercourse.

Therefore it was held : That A was legitimate and he had a right to inherit.

(ii) It must not be illegitimate: According to Muslim law there is no legitimation. Hence an illegitimate son cannot be acknowledged to make him legitimate. The principles of Roman law relating to birth per subsequense matrimoniam are not applicable. The leading case is: **Sadiq Hussain Vs. Hashim All.**

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(c) That there was no proof of paternity of A.

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In this case the Privy Council held that acknowledgement by the Muslim father of the child as his son is substantive evidence relating to the legitimacy, and hence, the child was legitimate.

iii) There must be nothing to rebut the presumption of paternity

a. The parties must be such as to be so related as father, wife and child in conformity with the presumption of paternity.

- b. Marriage must be possible between the father and mother of the child..
- c. The person acknowledged must not be the child of an illicit intercourse; and '
  - d. There must not be any disclaim or repudiation by the father. .

**The leading case is: *Habibur Rehman Chowdary Vs. A/taf Chowdary,***

A was the daughter's son of the Nawab. N one person H son of Cohen .sued A and claimed that the Nawab had married Cohen. Hence, he claimed his share as son. Held neither marriage nor acknowledgement was proved and hence, A failed.

Acknowledgement may be express or implied.

**Effects:** Acknowledgement has the legal effect of making the child legitimate and has the legal effect of the acknowledgement of the wife also. A valid acknowledgement gives rights of inheritance to the children and to the wife.

An acknowledgement is **not revocable**.