

**Dr. Haidar Hobballah**

## Familial and Societal Rights of *ibn Zinā* (illegitimate son)

### **ABSTRACT:**

The topic of what constitutes an illegitimate son is one of the most important and indeed intriguing topics in the study of Islamic jurisprudence in the present-day context. This topic is linked to human rights since the status of an illegitimate son has many implications and bearings on both the familial and societal life of such an individual. Many Muslim jurists opine that an illegitimate son does not belong to the family he is born in to. Therefore, he cannot take the name of either his mother or father and their family heritage cannot be attributed to him. He thus becomes separate from such a heritage. Furthermore, another major implication of such fatwas is that an illegitimate son is unable to take up certain positions in society or the state, such as being a president, the imām for the congregational prayers, or a judge/witness during court proceedings.

However, I find many epistemological flaws according to such verdicts of the jurists. These are as follows:

Many jurists have misapplied and misunderstood the principle of *ferash* – where the Prophet states: the child belongs to the legal couple, and the fornicator deserves nothing. They believe that this principle means that there is no relationship between the child and the fornicator (*zānī*) whatsoever, in any circumstance (if a child is born from this illegitimate relationship). The *zānī* can never be considered as a father for this child, even if we have certainty that this is his biological son (or daughter). However, I opine that there is an alternative more accurate interpretation of this principle. Therefore, if we want to apply this principle in a case where a married woman has committed adultery and a child is born from this relationship, but a person is unsure whether the child born belongs to the legally married couple or belongs to the man she had an affair with, this principle helps in these situations. Thus, this principle dictates that according to Sharia law, we must consider this child as the child of her legal husband.

1. However, if we have certainty that this child is not biologically related to her husband, but the son of the *zānī*, then the father will be the man she had an extramarital affair with. Therefore, the father will be the *zānī* and all the Islamic rulings related to father and his children must be applied.
2. The jurists have built their theory regarding the illegitimate son on two concepts: the authoritativeness of solitary narrations (*ḥujjiyyat khabr al-wāḥid*) and consensus (*ijmā*). As I do not believe in the authoritativeness of these two concepts in Islamic legal theory (*uṣūl al-fiqh*), I therefore cannot accept the results and/or fatwas given by jurists who rely upon these two concepts. Moreover, when examining such solitary narrations, one finds many contradictions between them. Consequently, we can only accept the narrations which are aligned with the Qurʾān and reason (*ʿaql*).
3. Lastly, it is more than likely that these narrations have been fabricated due to the context of the Arabian society at that time. People during this time would consider an illegitimate son as something very distasteful and abhorrent in society, to the extent that illegitimate children would be viewed as lower class people/citizens compared to people who claim a legitimate birth. As a result of this, many narrations were fabricated vilifying illegitimate (male) children. Consequently, I therefore disagree with jurists who have issued religious edicts preventing a male - born out of wedlock - from attaining both religious and societal positions such as being a judge or an imām of a community.



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### **BIO:**

Dr. Haidar Hobballah specialised in Qurʾān and ḥadīth sciences, jurisprudence and fundamentals of Islamic jurisprudence, and comparative religions as well as Christian theology. He has twenty-six years of experience as a teacher in the Islamic seminary of Qom, al-Mustafa University, and the University of Religions and Denominations. He is the founder and editor-in-chief of multiple journals. He has published intellectual, academic, and jurisprudential contributions in various journals and publications in Iran and the Arab world. He has authored twenty-two books in the fields of jurisprudence, fundamentals of jurisprudence, philosophy, hadith sciences, and theology and has published many of his articles in journals. Dr. Hobballah holds a PhD in Christian Theology and Comparative Religions from the University of Religions and Denominations in Iran and a Master's degree in Qurʾān and ḥadīth sciences from the Faculty of Fundamentals of Religion in Iran.