

Marital Infidelity and Paternity Dispute in Nigeria: an Islamic Perspective

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Abstract

According to the statistics revealed by the geneticists, there is a rapid and drastic increment in the number of parents that carry out a DNA test to determine the real biological father of their children, whom they have been nurturing for many years. The phenomenon is said to have resulted from the rampant marital infidelity among Nigerians. So, this paper is an attempt to explore the reason for such widespread marital infidelity, the means of curbing it and investigate the Islamic perspective on a DNA test for affirming paternity, and the extent to which the father under whose roof the child was born is compelled with the result of such test. So, the qualitative method is being employed to carry out the research by revisiting the classical literature related to the issue and collecting the data from relevant sources with adequate analysis. After a thorough investigation, the result of the study shows that the major reason for the widespread marital infidelity can be related to the prevailed un-Islamic system of establishing affairs between both sexes by having premarital relationships and intimacy with the opposite sex which usually continues after legal marriage. It also reveals that, based on Islamic jurisprudence, neither a DNA test nor other means of proof can deny the legal husband paternity of a child born under his matrimonial custody and give fatherhood to an adulterer.

Keywords: Marital Infidelity, Nigeria, DNA test, Paternity Dispute, Islamic Perspective.

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1. Introduction

The DNA test for determining the real biological father, or likely biological grandparent of a child is rapidly increasing in Nigeria. In an interview carried out on 18th September 2021, Abiodun Salami, who is a senior geneticist with DNA Centre for Paternity Test in Lagos state stated that: “Before now, we do an average of 100 DNA tests in a month, but now we handle as many as 400 cases monthly.” (Salami, 2021). The research shows that some fathers voluntarily go for the test, perhaps based on supposed marital infidelity, while some others are compelled to do so for a purpose, i.e., immigration order during their travel outside the country. It is revealed that some fathers even went secretly without the awareness of their wives to have the paternity of their children tested for certainty. (Salami, 2021). Surprisingly, according to a geneticist, the statistics of the results are horrible and heart-breaking, as it reveals that nearly 60 per cent of the tests are negative, as the assumed fathers were proved wrong by the outcome of the tests. (Ogundipe, 2021; Salami, 2021). The result of this statistic is really shocking, especially when Nigeria is considered a Muslims-Christians dominated country, whereas fornication and adultery are strictly prohibited in both religions. According to the Islamic verdict on adultery, Allah says: “Do not approach adultery! Surely it is an abomination and evil way.” (Qur’an, Israi: 32). In addition, capital punishment is awaiting the adulterers in Islam, as the stoning to death is its penalty. (al-Bukhārī, hadith no. 2695; Muslim, hadith no. 1695). Similarly, according to the authentic hadith, the same penalty was placed for the adulterers in the Old Testament. (al-Bukhārī, 3635 and 6841; Muslim, 1699). Likewise, a hundred lashes should be given to the fornicator in Islam. Allah says:

As for female and male fornicators, give each of them one hundred lashes,¹ and do not let pity for them make you lenient in ‘enforcing’ the law of Allah if you ‘truly’ believe in Allah and the Last Day. And let some believers witness their punishment. A male fornicator would only marry a female fornicator or idolatress. And a female fornicator would only be married to a fornicator or idolater. This is ‘all’ forbidden to the believers. (Qur’an, al-Nur: 2-3).

According to the Old Testament: “And the man that committed adultery with another man's wife, even he that committed adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death.”

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(Leviticus, 20:10). It is stated in the New Testament that: “Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral.” (Hebrew, 13:4).

Though, the identities of the perpetrators and victims of the infidelities are not revealed to determine the percentage of Muslims and non-Muslims among them. However, based on similar cases publicized on social media, it is obvious that the majority of the perpetrators of this sinful act are Muslims and Christians. So, this paper intends to explore the causes of the drastic marital infidelity in society and the means of curbing it in the light of Islamic guidance and teachings. Likewise, the Islamic point of view on DNA tests, and to what extent the father under whose matrimonial home the child was born is obliged, by Islamic law, to accept the result of the test will be examined.

2. The Causes of Rampant Infidelity Amid Nigerians

In the first place, the source of all problems lies in the fact that the majority of Muslims have distanced themselves from learning and understanding Islamic teachings and jurisprudence. Few Muslims are keen on basing their daily activities on the principles of Islam, while the largest percentage are just claiming to be Muslims by name without acknowledging Islam as a complete way of life, thus you see such Muslims engage in several daily activities based on societal norms and their desire and ego, whereas Islam has laid down the principles and procedure for every aspect of human daily activities, whether spiritual or social aspect. This fact was even testified by non-Muslims. Salman al-Fōrisī reported that it was said to him that your Apostle (pbuh) teaches you about everything, even about excrement. He replied: Yes, he has forbidden us to face the *Qiblah* at the time of excretion or urination, or cleansing with the right hand or with less than three pebbles, or with dung or bone. (Muslim, hadith no. 262). Therefore, several moral and ethical malpractices that are prohibited in Islam occur on the daily basis from the masses due to their ignorance of the Islamic injunctions. On the other hand, some Muslims who are conversant with the injunction do not really comprehend the repercussion of violating Allah’s law. (Yusuf Basirat Bolanle, personal interview, 20/03/2022).

Another major reason that is responsible for this immoral and unethical phenomenon can be associated with the premarital relationship and un-Islamic intimacy that usually occurs between young girls and young

boys/men. Cordial relationship and intimacy between young boys and girls during the school days, or outside the school between bachelors and bachelorettes is rampant in society and even considered legit by those who do not conversant with the teachings of Islam in as much as no one force another in such relationship. (Smith, 2010). However, the establishment of any kind of relationship between a male and female without fulfilling the legal conditions is totally prohibited in Islam. (al-Nisai: 25).

Unfortunately, in most cases, such an unlawful relationship ends up in vanity and breaking up after a long-time of illegitimate intimacy. The worst part of such a relationship lies in the fact that any kind of chance to reunite again in the future, even after a legal marriage of both sides, often leads to infidelity. In some cases, the ex-boy or girlfriend may acquire a bigger space in the heart of the spouse, due to the kind of previous relationship they had together, compared to the one he/she is having with the legal wife/husband. (Obalowu Azeez, personal communication, 25/02/2022). In another hand, most undergraduate female students in Nigerian higher institutions normally have a man or men friends who usually sponsor their education and cater for their needs aside from their parents. Such females always find it difficult to cut off their relationship with these men after their graduation, but it usually continues after their legal marriage to other men. (Smith, 2010). Thus, the results of DNA tests confirm that the most first child of many households is not fathered by the legal husbands because these wives have engaged in a prior intimate relationship, such of which lasts till after they get married to other men, at least for a while after their legal marriage. (Salami, 2021). So, many Nigerians (men and women) enter their marital life with the premarital experience of romantic and sexual relationships with others. Such previous romantic experience is often found more enjoyable, by some couples, than the current one. Smith addresses some of the reasons for this act in the following argument:

With later age at marriage and high rates of rural-urban migration that place unmarried young people farther away from the moral gaze of their parents, their extended families, and their communities, opportunities for premarital relationships are common. Further, sexual and romantic relationships before marriage are widely seen as markers of being urban and educated, but also as a sort of rehearsal for marriage. (Smith, 2010).

3. Ideal Way of Curbing Rampant Marital Infidelity in the Light of Islamic Teachings and Guidance

3.1 Consciousness of Allah

In the first place, a Muslim is required to be conscious of Almighty Allah wherever he/she finds him or herself. He is urged to completely comply with the injunctions of Allah and His messenger (pbuh), as such signifies his complete faith. Allah says: “O you who have believed, enter into Islam completely and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy.” (Qur’an, Baqarah: 208). In another place He says: “Whatever the Messenger of Allah has brought to you (injunctions), take it. And whatever he forbids you from, leave it. And fear Allah. Surely Allah is severe in punishment.” (Qur’an, al-Hashr: 7). Abu Ḥurayrah reported that the Prophet of Allah said: “if I forbid you to do something, then keep away from it. And if I order you to do something, then do of it as much as you can.” (al-Bukhari, hadith no.7288). Therefore, a believer should strive enough to the last of his/her ability to attain a sufficient level of piety, spirituality and consciousness of Allah that will enable him/her always feel the presence of Allah and His awareness of every act. The attainment of enough level of *īmān* will help a believer to abide by Allah’s law and abstain from His prohibitions. One of the unique features that distinguish righteous Muslims from all other mankind is self-accountability. Since a believer knows that he will be held accountable by Allah on the day of judgement for everything he perpetrates in this life, he would surely fear only divine retribution. Therefore, he wouldn’t wait for any external force or monitoring before the proper adherence to the injunctions of the Lord. (Mawdudi, n.d).

3.2 Abiding by the Islamic Approach to Marriage

There were different kinds of marital relationships practised by Arabs before Islam, such as it is the current situation in our community, all of which were nullified in Islam except the one which is Islamically recognized as a legal way of the union between both sexes. It is reported by ‘Āishah, the wife of the Prophet (pbuh) that there were four major types of marriage during the period of *jāhiliyyah* (ignorance) before Islam. (1) The one that was similar to that one practising in Islam till today, where a man or his

guardians would ask other parents for the hand of a girl under their custody and give her dowry and then marry her. (2) The other type of marriage known as *al-Istibā'*, whereby a man would send his wife after her menstrual period to go and have sexual intercourse with another man to conceive from him, to have the breed of that outsider man in their family. (3) The third type of marriage performed by Arabs before Islam was that the people fewer than ten men would have intercourse with a woman and impregnate her. Then, she would invite all of them after having a baby and just choose one of them as the legal father of the child. (4) The other type of marriage was where different people would copulate with the prostitute. After delivering a baby, one of those people would be chosen to be a father for the baby based on the decision of *al-Qiyāfah* (the skill of recognizing someone's father from the resemblance). So, when Islam came, all these forms of marriage were abolished except the one that is being practised in Islam today. (al-Bukhari, hadith no. 5127). This transformation that occurred from Arabs from the *jahiliyyah* norm to the Islamic one shows the impact of the *īmān* in the believers' life, when it is well established in someone's heart he strictly and swiftly abides by the injunctions of Allah and stay away from all His prohibitions without any reluctance. Thus, true believers ought to firmly abide by and comply with the teachings of Islam in all affairs. Allah says: "It is not fitting for a Believer, man or woman when a matter has been decided by Allah and His Messenger to have any option about their decision: if anyone disobeys Allah and His Messenger, he is indeed on a wrong path." (Qur'an, al-Ahzab:36).

3.3 Adherence to the Precautionary Measures for Avoiding Fornication

Islam has laid down some proactive measures to prevent the believers from all forms of actions that can lead to fornication and adultery, except that many Muslims do not comply with those rules. If Muslims strictly consider these measures, all forms of fornications and adulteries will be minimized and restricted in society, since it will be very difficult to move closer to *Zina*. Qur'an has prohibited all forms of actions that can lead to engaging in any unlawful relationship with the opposite sex. Allah says: "And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way." (Qur'an, Israi:32). More so, Islam has made it compulsory for male Muslims to lower their gazes and protect their private parts from unlawful things. Allah says: "Tell the believing men to lower their gaze (from looking at marriageable women) and guard their private

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parts (from unlawful sexual intercourse). (Qur'an, al-Nur:30). Likewise, the same directive goes to the female Muslims to lower their gaze, and they were also urged to be putting on decent outfits whenever they are in the midst of marriageable people. Allah says:

And tell the believing women to lower their gazes and guard their private parts, and not to reveal their adornments except what normally appears. Let them draw their veils over their chests, and not reveal their 'hidden' adornments except to their husbands, their fathers, their fathers-in-law, their sons, their stepsons, their brothers, their brothers' sons or sisters' sons, their fellow women, those 'bondwomen' in their possession, male attendants with no desire, or children who are still unaware of women's nakedness. Let them not stomp their feet, drawing attention to their hidden adornments. (Qur'an, al-Nur: 31).

Islam also encourages the believers to get married once they are due for it to fulfil their sexual desire lawfully. Allah's Messenger (pbuh) said: O! young men, those among you who are financially and physically buoyant should marry, for the marriage help on lowering the gaze from haram and prevents one from unlawful sex; but those who cannot afford marriage should devote themselves to fasting, for it is a means of controlling sexual desire. (Muslim, hadith no. 1400). Islam does not consider marriage as a mere social activity. However, it is an act of worship, such of which is associated with a big reward for whoever fulfils the marital responsibilities in a good manner. On top of that, the sexual enjoyment that occurs through a legal marriage is even highly rewardable in Islam as equivalence to the reward of *ṣadaqah* (charity). It is reported that some of the companions told the Prophet (pbuh) that the rich people have acquired all the rewards of good deeds. Since they do pray and fast as we do, and give the charity out of their surplus wealth, much of which we do not have the privilege to. So, the Prophet said: Has Allah not given you the means, through which you can also give charity? Then, he mentioned several deeds that give a believer the reward of charity, among which he said that in a believer's sexual intercourse with his wife there is a reward of charity. The Companions were so astonished and asked him, is there a reward for him who satisfies his sexual passion among us? The Prophet (pbuh) replied: will there not be a sin if he unlawfully had sex? Similarly, there would be a reward for having it lawfully. (Muslim, hadith no. 1006.)

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Another way of preventing fornication and adultery in Islam is considering *zinā* to be a major sin whose penalty is a capital one; stoning to death is a penalty for any married person that commits adultery in Islam, while a hundred lashes should be the portion of any unmarried man and woman that fornicate. (Qur'an, al-Nur:2; Muslim, hadith no. 1690; al-Bukhari: hadith no. 2724). In a situation where shari'ah of Allah is properly enforced if the consciousness of Allah does not prevent a believer from committing *Zina* or claiming another person's child the fear of such punishment would definitely drive him away from doing so.

In addition to the above points, Islam has taken extraordinary precautions to prevent fornication by prohibiting the loneliness of a man with a marriageable woman in a place without the presence of any of her relatives and forbidding her from travelling alone. The Prophet of Allah said that it is forbidden for a man to be alone with a woman, and a woman should not travel alone without her *Mahram* (relative). Then a man rose and said, O Prophet of Allah! I have enlisted in the army for such-and-such battle and my wife is going to Hajj. For the wife not to travel alone, the Prophet said: go and perform the Hajj with your wife. (al-Bukhari, hadith no. 3006). It is even prohibited for any male member of the husband's family, besides the father-in-law, to be isolated with the wife in a room without any other person to prevent evil. The Prophet (pbuh) to the companions, beware of entering upon the ladies. So, one of the companions said, O Apostle of Allah! what about the in-laws of the wife (the brothers of her husband or his nephews etc.)? The Prophet (pbuh) replied: The in-laws of the wife are death itself; for them to be alone with the wife in a close place is more dangerous. (al-Bukhari, hadith no. 5232; Muslim, hadith no. 2172).

Indeed, the practical aspect of all the aforementioned precautionary measures laid down in Islam to prevent all forms of actions that can lead to marital infidelity might seem to be hardly achievable in a society that does not enforce Islamic law, such as the case in Nigeria. Here comes the role of self-discipline and accountability, whereby every single Muslim should be strictly striving to comply with the injunctions of Allah and His messenger to become a righteous servant of Allah and prioritize the everlasting reward of Allah over unlawful enjoyment that lasts for a few minutes. Allah says: "O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones, over which are [appointed] angels, harsh and severe; they do not disobey Allah in what

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He commands them but do what they are commanded.” (Qur’an, al-Taḥrīm: 6). The Prophet of Allah (pbuh) was asked, what is *Ihsān* (best way of worshipping Allah)? He replied: To worship Allah as if you see him before you, and if you cannot attain this state of devotion, then you should be completely sure that He sees you wherever you are. (al-Bukhari, hadith no. 50).

4. Legal Means of Establishing the Paternity of a Child in Islam

One of the main objectives of Shari‘ah is the preservation of genealogy and the protection of the family bond from any kind of intruder. (al-Shātibī, 1997, 2/20). The only legitimate means of establishing paternity in Islam is through legal marriage that fulfils the specific requirements, in addition to the possibility of the occurrence of sexual intercourse between both parties after such marriage. If a wife gives birth six months from the day in which the marriage took place, the baby is considered to be fathered by the husband under whose matrimonial home the baby was born. (ibn Nujaym, n.d., 4/168-9). The majority of the scholars agreed that to establish the paternity of the newborn to the father, the birth must happen after the minimum period of pregnancy -six months- from the time of the possibility of intercourse between both parties, or from the time of marriage according to Abu Ḥanīfah. (al-Shawkānī, 2015, 8/289-0). Such a husband has no right of objection; the baby should be affiliated with him. (Ibn Ḥajar, 1379 A.H., 12/34). The scholar’s agreement on this rule derived from the decree of the Prophet (pbuh) regarding the dispute that occurred between Sa‘d bin Abi Waqqāṣ and ‘Abd bin Zam‘ah over a boy. Sa‘d said to the Prophet (pbuh): this boy is the son of my brother ‘Utbaḥ bin Abī Waqqāṣ. He told me that he is his son. He then called Prophet’s attention to the resemblance between the boy and his brother -‘Utbaḥ-. Likewise, ‘Abd bin Zam‘ah said, this is my brother O Prophet of Allah. He was born to my father by the slave girl under his *firāsh* (bed/custody). Then the Prophet (pbuh) looked at the boy and noticed the evident resemblance between him and ‘Utbaḥ. Despite the apparent resemblance, the Prophet (pbuh) decreed that the boy is for ‘Abd bin Zam‘ah, and stated the general principle on the issue and all other related issues: *al-walad li al-firāsh wa li al-‘āhir ḥajar* (The paternity of a child goes to the legal husband and the fornicator is a loser). (al-Bukhari, hadith no. 6765; Muslim, hadith no. 1457). In another version of the same ḥadīth, it is reported that a man stood

up in front of the Prophet (pbuh) and claimed that so-and-so is my son; I had illicit intercourse with his mother in the pre-Islamic period. The Messenger of Allah (pbuh) responded that: there is no unlawful claiming of paternity in Islam and what was done in pre-Islamic times has been annulled. So, the child is attributed to the one on whose bed it is born, and the fornicator is deprived of any right.” (Abu Dawud, hadith no. 2274; Ahmad, hadith no. 6681, 6933).

4.1 Commentary on the hadith:

There are many rules related to the topic of the research that can be derived from the above hadith which is considered to be the main evidence on this issue.

- Islam has abrogated the pre-Islamic means of establishing the paternity of a child, whereby any outsider can just come to claim the fatherhood of a baby, whether the baby was born under his custody from legal marriage, or he impregnated a woman under another husband’s custody. Ibn Ḥajar said that Sa’d bin Abī Waqāṣ claimed that the son belongs to his brother based on pre-Islamic norms, since his brother had illegal sexual intercourse with the slave girl under another person’s custody, while ‘Abd bin Zam’ah said that the son was his brother’s based on the principle of Islam since the slave girl belonged to his father. So, the Prophet (pbuh) nullified the norm of *jahiliyyah* and confirmed Zam’ah as the father. (Ibn Ḥajar, 1379 A.H., 12/33).
- The verdict that is established based on the Qur’an, Sunnah or *Ijmā’* supersedes the one that is established based on technical or scientific proof. So, the paternity of a child goes to the legal husband under whose roof the baby is born, regardless of the DNA test result. Ibn Ḥajar said *al-Qiyāfah* (Physiognomy) can only be considered if it is not superseded by another legal proof. Thus, the Prophet (pbuh) did not consider the resemblance in the case mentioned in the above hadith and the case of *mulā’anah* (mutual invoking of curses between husband and wife, if the husband accuses his wife of adultery), since it contradicts another stronger verdict that is established based on the Qur’anic text, which is *mulā’anah*. (Ibn Ḥajar, 1379 A.H., 12/35). The majority of contemporary jurists hold the opinion that if any of the

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unanimous traditional legal proofs -*firash*, *albayyina*, and *iqrar*- is provided, it is not allowed to resort to any other means, such as DNA testing except in a disputing circumstance where using of physiognomy is allowed. According to Sarumi et al., "this opinion has been reiterated in the resolution of the council of the international Islamic Fiqh academy of the organization of Islamic cooperation. Among the scholars who have conducted painstaking research in favour of this opinion are, al-Qardagy, Wahabah al-Zuhaily, Nasir Farid, Umar Muhammad Sabil, Muhammad Sulayman al-Ashqar and some others." (2017, 5).

- A child is automatically fathered and owned by the husband under whose custody the baby is being born, except if the husband denies his paternity during the pregnancy or immediately after delivering. Otherwise, he has no right to disown the child in the future. So, it is not allowed to run a DNA test for such a child who has previously been accepted by the legal husband since the paternity that has been legally established can neither be rejected anymore nor it can be transferred to another parent. (Ibn Quddāmah, 1968, 8/53; Zayn al-Dīn, 3/304; Sarumi, et al., 9). Allah says: "O you who have believed, do not ask about things which, if they are shown to you, will distress you." (Qur'an, Al-Maidah: 101). Any paternity that is established on the principle of Islam cannot be ever denied again. Al-Nawawī said that the meaning of "the child is affiliated to the one under whose bed it is born" is that someone's wife has become his bed, so any child that is born under that marriage is owned by the husband, whether the child resembles him or not. (al-Nawawī, n.d., 10/37).
- A child that is born under the roof of a legal husband cannot claim another father for him/herself based on DNA test results or confession. Narrated Abu Dhar: The Prophet (pbuh) said, "If somebody claims to be the son of any other than his real father knowingly, he but disbelieves in Allah, and if somebody claims to belong to some folk to whom he does not belong, let such a person take his place in the Hell-Fire." (al-Bukhari, hadith no. 3508; al-Nawawī, n.d., 10/37).

5. The Guidelines on the Employment of DNA Test in Establishing Genealogy

No dispute about the fact that a DNA test is one of the modern scientific ways of establishing genealogy that no prohibitive proof has been recorded

whether from the Quran and Sunnah or the scholars' consensus. So, the default verdict on DNA is permissibility. It is argued that:

Contemporary Muslim jurists have upheld the validity of adopting DNA testing to establish the true genealogical relationship by considering it strong circumstantial evidence on basis that its result is reliably proved accurate beyond a reasonable doubt in establishing a child's legitimacy and illegitimacy. Additionally, it is believed to be more convincing than some legally established evidence like physiognomy and lot-casting that are considered last resort to determine the legitimacy of a child. (Sarumi, et al., 4-5).

However, the result of the DNA test can only be considered in the situations where any classical legal proofs -*bayyina*, *firash*, *iqrar*- are not involved, or else, the employment of the DNA test would be rendered invalid. (Sarumi, et al., 9). So, the employment of DNA tests is restricted to the disputed matters which cannot be established by one of the means approved by the classical proofs, such as the following cases: (Sarumi, et al., 8-9).

- In a situation whereby the babies are mixed up in the hospital, daycare centres, etc.
- When the traces of the genealogy become difficult due to natural disasters, accidents, war, etc.
- DNA testing should be employed when there is a mixed up of in vitro fertilization or artificial insemination procedures to avoid attributing the fetus to the wrong parents.
- It is allowed to resort to DNA testing to reveal the fact when two or more people claim a child of unknown genealogy or an orphan.
- When a baby is born through doubtful sex (*wat'u alshubha*) of an invalid marriage like *shighar* and *mut'ah* marriage or marrying a divorced woman or a widow whose waiting period has not been completed. Affiliation of such a child to the first or second husband might be questionable, so, it is allowed to result in the adoption of a DNA test.
- When a woman delivers a baby after a marriage contract of fewer than six months.

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- DNA testing should be employed when a person of unknown lineage claims affiliation to a particular tribe to examine the authenticity of the claim.

6. Legal Means of Denying the Paternity

A child that is born from a legal marriage can never be disowned by the husband except through *al-mulā'anaḥ* (mutual invoking curse). Qur'an, al-Nur: 6-9). Ibn 'Umar reported that a man and his wife had *Mulaā'ana* (mutual invoking curse) during the lifetime of the Prophet (pbuh) and the man denied the paternity of her child. So, the Prophet (pbuh) gave his verdict for their separation (divorce) and then the child was regarded as belonging to the wife only. (al-Bukhari, hadith no. 6748). Based on the opinion of al-Shāfi'ī, if a husband didn't deny his responsibility for being the father of a baby during the pregnancy or immediately after the birth, while he could do so, then he has no right of objection after that moment, so, the baby is legally his. Some scholars stated that the right of objection can be extended to the period to which a hungry or thirsty one eats and drinks or the one in prayer finishes his praying, or the one in the night waits till the morning, etc. If such a husband delays the complaint more than this period, then he will not have any right to deny the paternity of the baby. (Ibn Quddāmah, 1968, 8/79). An opinion is ascribed to Al-Shāfi'ī that if a husband has the opportunity to sue his wife for infidelity while she was pregnant and delays doing so without excuse until she delivers a baby, such a husband has no right of disowning the baby anymore. (al-shawkānī, 2015, 6/319). It is reported that 'Umar bin al-Khaṭṭāb gave a verdict concerning a man who denied a child while he was in his wife's womb, then he agreed to be responsible for impregnating her before she delivered the baby. When the baby was born, he denied being responsible for it again. So 'Umar ordered that he should be caned eighty lashes for slandering his wife, then the baby was affiliated to him. (al-Shawkānī, 2015, 6/326). It is reported from Abu Hanifah that the husband has the grace of one to two days to raise the alarm and deny the baby. While some other scholars of the Hanafi school extended this period to cover the whole period of *nifas*. (Ibn Quddāmah, 1968, 8/79).

7. Summary and Conclusion

The paper addresses the marital infidelity and paternity dispute in Nigeria based on the Islamic point of view. So, the Islamic stance on a DNA test for determining the real biological father of a child is examined. This phenomenon is swiftly growing among Nigerians due to rampant marital infidelity. Likewise, the reasons for the widespread marital infidelity and the Islamic decree on such acts are addressed. Similarly, the mean of curbing marital infidelity in the light of Islamic teachings and guidance, and the Islamic approach to resolving paternity disputes are also discussed.

The research shows that one of the major reasons for the widespread marital infidelity resulted from the lack of proper understanding of Islamic teachings and jurisprudence, hence, several moral and ethical malpractices that are prohibited in Islam occur on the daily basis from the masses. Another main reason that is responsible for this immoral and unethical act can be associated with the premarital relationship between young girls and young boys/men that have become one of the societal norms, despite the total prohibition of such practice in Islam. So, many households resulted in carrying out a DNA test to determine the real biological father of a child born by their legal wife under their matrimonial custody. While in another hand, some men outside the marriage dare to claim a child under another men's custody based on the DNA test result. Surprisingly, some wives also have the courage to deny their legal husband under whose roof the child was born from being the biological father of their children. All these acts are totally condemned in Islam since the only legitimate means of establishing paternity in Islam is through legal marriage that fulfils the requirements. If a wife gives birth six months from the day in which the marriage took place, the baby is considered to be fathered by the husband under whose matrimonial home the baby was born. So, such a child neither can be disowned by the father nor he can be claimed by any other man, except if the legal husband denies being responsible for it during pregnancy or immediately after delivery, then, the baby will be affiliated to the mother alone after *mulā'annah*. Thus, it is clear that, in Islam, no anyone outside the marriage is allowed to claim a child that is born under another person's matrimonial custody whether by DNA test or confession. Otherwise, such a person will face the consequences of such a claim and be charged for committing adultery without affiliating the child to him. In Islam, the child is only attributed to the one on whose bed it is born, and the fornicator is deprived of any right. However, no dispute about the fact that a DNA test

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is one of the modern scientific ways of establishing genealogy that no prohibitive proof has been recorded whether from the Quran and Sunnah or the scholars' consensus. So, the default verdict on DNA is permissibility and it can be adopted in situations where any classical legal proofs, such as *bayyina*, *firash*, *iqrar* are not involved, or else, the employment of DNA test would be rendered invalid, since the verdict that is established based on the Qur'an, Sunnah or *Ijmā'* supersedes the one that is established based on the technical or scientific proof. So, the employment of DNA tests is restricted to the disputed matters which cannot be established by one of the means approved by the classical proofs. Islamic stance that only recognizes the paternity of the legal husband and totally denies the adulterer and places on him capital punishment is the balance and logical solution to such a social problem. In the first place, the verdict serves as a severe punishment for the adulterer, otherwise should be considered as promoting adultery. On another side, the legal husband would not be deprived of his right, as he is the right person to benefit from the child born under his matrimonial custody. Thus, it is obviously clear that the rampant phenomenon of claiming children under another household's roof by other men outside the marriage is totally condemned in Islam. The legal husband under whose roof the baby was born is only recognized and legit father of the child regardless of the result of the DNA test or any other proof. Such an outsider that dares to claim another person's child should be punished accordingly under Islamic law.

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Authors' Contributions

The authors designed the study and gathered the literature and wrote the article.

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