33591 - An illegitimate daughter is asking, Whose daughter am I?

the question

I'm an illegitimate child. I was conceived before my mother became Muslim. She became Muslim a few days before my birth. My parents married when I was 10 months old. My parents got divorced 2 years ago, after I disclosed sexual abuse by him. I have used my father's name since I was born and he has always accepted paternity of me. Do I need to change my name to my mother's name? I am 14 year old and have five siblings, all with my father's name. I read the answers on this site and all seemed to say that I should, but one answer by Shaykh 'Abd-Allah ibn Jibreen seemed to say the opposite. (Question Reference Number 5967) He stated that if the father accepts paternity, it is permissible to retain his name. Please clarify this issue for me.

Detailed answer

Praise be to Allah.

Firstly: we confirm that the illegitimate child has nothing to do with his parents’ crime, and that he has all the same rights as any other Muslim, male or female. He must also fear Allaah so that he may become one of the people of Paradise with whom Allaah is pleased.

Secondly: the scholars differed as to whether or not the child may be attributed to his adulterous father, if the woman was not married.

What that means is: if the woman was married and had a child six months after being married, then the child should be attributed to the father, and he cannot deny the child unless he divorces his wife by means of li’aan. If a man claims that he committed zina with this woman and that this is his illegitimate child, no attention should be paid to him, according to scholarly consensus, because the Prophet (peace and blessings of Allaah be upon him) said, “The child is to be attributed to the husband and the adulterer deserves nothing.” Narrated by al-Bukhaari, 2053; Muslim, 1457.

Ibn Qudaamah said: “The scholars were unanimously agreed that if a child is born to one man’s wife, and another man claims it is his child, the child is not to be attributed to the latter. The difference of opinion arises when a child is born outside of marriage.”

If the woman is not married, and she has a child as a result of zina, and the zaani (adulterer, man who committed zina) claims it is his child, should the child be attributed to him or not?

The majority of scholars are of the view that the child should not be attributed to him.

It was narrated from al-Hasan, Ibn Sireen, ‘Urwah, al-Nakha’i, Ishaaq and Sulaymaan ibn Yassaar that the child should be attributed to him.

This was also the view favoured by Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him).

Ibn Qudaamah also narrated this view from Abu Haneefah. He said: “ ‘Ali ibn ‘Aasim narrated that Abu Haneefah said: If a man commits zina with a woman and she gets pregnant from him, I do not see anything wrong with him marrying her even though she is pregnant, so as to conceal her (sin), and the child will be his child.” (al-Mughni, 9/122).

Ibn Muflih (may Allaah have mercy on him) said: Our shaykh [Ibn Taymiyah] favoured the view that a man may attribute to himself a child who is the result of zina with an unmarried woman. al-Furoo’, 6/625

Ibn Qudaamah (may Allaah have mercy on him) said: The illegitimate child should not be attributed to the zaani according to the majority of scholars, but al-Hasan and Ibn Sireen said: he may be attributed to the zaani if the hadd punishment has been carried out on him, and he may inherit from him. Ibraaheem said: He may be attributed to him if the hadd punishment of flogging has been carried out, or if he becomes the owner of the woman with whom he had intercourse. Ishaaq said: He may be attributed to him, and he quoted something similar from ‘Urwah and Sulaymaan ibn Yassaar.

Shaykh al-Islam (Ibn Taymiyah) said: There are also two views among the scholars concerning the

zaani claiming the child as his if the woman is not married. The Prophet (peace and blessings of Allaah be upon him) said: “The child is to be attributed to the husband and the adulterer deserves nothing.” So he said that the child belongs to the husband, not the zaani. But if the woman is not married then this hadeeth is not applicable. ‘Umar attributed children born in the jaahiliyyah to their fathers, but this is not the place to discuss this issue in detail.

Al-Fataawa al-Kubra, 3/178

The majority of scholars quoted as evidence that the illegitimate child should not be attributed to the zaani the hadeeth narrated by Ahmad (7002), Abu Dawood (2265) and Ibn Maajah (2746) from ‘Amr ibn Shu’ayb from his father from his grandfather who said: “The Prophet (peace and blessings of Allaah be upon him) ruled that whoever is born to a slave woman who was not owned by his father, or (was born to) a free woman with whom (the father) committed zina, then he cannot be attributed to him nor can he inherit, even if the one to whom he is attributed claims him as a son. He is the child of fornication whether his mother was a free woman or a slave.”

This hadeeth was classed as hasan by al-Albaani in Saheeh Abi Dawood, and by al-Arna’oot in Tahqeeq al-Musnad. It was quoted as evidence by Ibn Muflih to support the view of the majority.

The Prophet (peace and blessings of Allaah be upon him) ruled that the illegitimate child should not be attributed to the zaani and could not inherit from him, even if the zaani claimed him as his child.

Undoubtedly attributing the child to a particular person is a serious matter on which many rulings of sharee’ah depend, such as matters of inheritance, who is forbidden for marriage (mahrams) and who are his relatives.

The point is that the fatwa which says that the illegitimate child should not be attributed to the zaani is in accordance with the view of the majority of scholars.

With regard to Shaykh Ibn Jibreen (may Allaah preserve him), perhaps he based his view on the other scholarly view which we have mentioned above.

Based on the view of the majority, the illegitimate child – whether male or female – should not be attributed to the zaani, and should not be described as his child. Rather he should be attributed to his mother; he is a mahram for her and may inherit from her like all her other children.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said: “With regard to the child who is born as a result of zina, he is the child of his mother, not of his father, because of the general meaning of the hadeeth in which the Prophet (peace and blessings of Allaah be upon him) said: ‘The child is to be attributed to the husband and the adulterer deserves nothing’ – i.e., this is not his child. This is what the hadeeth means. If the man marries her after repenting, then the child has been conceived before marriage and repentance and is not his child; he cannot inherit from the man who committed zina even if he claims him as his child, because he is not his legitimate child.”

From Fataawa Islamiyyah, 3/370.

In Fataawa al-Shaykh Muhammad ibn Ibraaheem (11/146) it says: The child who is created from the sperm of the zaani cannot be called the child of the zaani.

And Allaah knows best.