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GENETIC TESTING IN MATRIMONIAL DISPUTES: JUSTICE AT AN EXPENSE OF CHILD'S PRIVACY?

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ABSTRACT
Courts in India have time and again embraced DNA, a genetic technique as admissible in evidence as a perfect science[3], stating it to be scientifically correct and reliable[4]. In matrimonial cases, peculiarly during testing of presumption under Section 112 of the Indian Evidence Act, judiciary has gone to the extent of accepting DNA testing as "*most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity*"[5]. Albeit, one of the underlying issues that emerge while enduring DNA testing is its impact on right of privacy of a child involved. While acknowledging it to be "*extremely delicate and sensitive aspect when it gets down to human relationship*"[6], courts often find themselves with dilemma of striking a balance between victim's right to fair trial and preserving child's right of individual privacy.[7] The present research paper delves into instances where a child's legitimacy is questioned, and attempts to critically analyse the recent developments in judicial appreciation of genetic evidence in matrimonial cases in three parts: Part I: *Presumption v. Proof*, mapping the legal roots determining legitimacy; followed by Part II: *Child's Privacy,* a critique of protection of personal liberty of child in a matrimonial dispute and Part III: *Practice*, an analysis of recent Supreme Court and High Court rulings on child's genetic testing showcasing contemporary appreciation and judicial gatekeeping whilst balancing the rights of individuals involved.

KEYWORDS: Genetic Testing, Appreciation of Forensic Evidence, Privacy, Rights of Children, Presumption of Legitimacy, Matrimonial Dispute

INTRODUCTION

The intersection of normative legal presumptions and emergence of genetic evidence presents tension in contemporary matrimonial adjudications. In India, paternity dispute derives legal presumption from Section 116 of the Bharatiya Sakshya Adhiniyam, 2023[8] which embodies the common-law[9] maxim *pater est quem nuptiae demonstrant* meaning the father is he whom the marriage indicates[10]. The legislative intent behind the provision remains to establish legitimacy of the child born out of a valid marriage unless non-access is proved to preserve moral and social stability of a family. Granting such presumption to the degree of a conclusive proof[11], the law weighed social legitimacy over biological certainty.

The emergence of genetic or DNA profiling has shifted the gears towards scientific accuracy raising questions on the traditional presumption in matrimonial litigation, while raising contemporary concerns revolving around privacy, dignity, fair trail, and, most importantly, the welfare of the child[12]. Indian courts have consequently been required to balance the evidentiary value of scientific truth against the social and moral objectives underlying Section 112. Courts have repeatedly met with the question of "how a Court can prevent the law's tidy assumptions linking paternity with matrimony, from collapsing, particularly when parties are routinely attempting to dislodge such presumptions by employing modern genetic profiling techniques"[13]

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[3] Pantangi Balarama Venkata Ganesh vs State of A.P, 2009 (14) SCC 607; Nandlal Wasudeo Badwaik vs Lata Nandlal Badwaik, 2014 (2) SCC 576
[4] Amarjit Kaur vs Harbhajan Singh, (2003)10 SCC 228
[5] Dipanwita Roy vs Ronobroto Roy, AIR 2015 SC 418
[6] Sharda vs Surat Singh, Cr. MMO No. 198 of 2016 (HP HC)
[7] Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, arising out of SLP (C) No.9855/2022 (SC)
[8] Replaced Section 112, Indian Evidence Act, 1872.
[9] Cross on Evidence, Colin Tapper, Cross and Tapper on Evidence (12th ed., Oxford University Press, 2010), pp. 622–624; Kamti Devi v. Poshi Ram, (2001) 5 SCC 311.
[10] John Henry Wigmore, Wigmore on Evidence (Chadbourn Rev., Little, Brown & Co.), Vol. IX
[11] Section 4, Bharatiya Sakshya Adhiniyam, 2023 (Replaced Section 4 of the Indian Evidence Act, 1872)
[12] Phipson on Evidence, Hodge M. Malek (ed.), Phipson on Evidence (19th ed., Sweet & Maxwell, 2018)
[13] Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, arising out of SLP (C) No.9855/2022 (SC)

Though law is clear on the legal presumption of legitimacy of a child born during the subsistence of a valid marriage unless proven non-access, the courts often are encountered with with applications questioning the paternity of children, as the parties seek to either prove the alleged adultery or rebut it on the basis of genetic testing. Judiciary as taken up the role as a gatekeeper owing to routine filling of such applications with contentions of enabling the party to produce the best of evidence to ensure right to fair trial. While on the other of the spectrum contentions have been raised to analyse need for genetic testing through 'the prism of the child and not through the prism of the parents' as a 'child cannot be used as a pawn' to show that the mother of the child was living in adultery, given it is always open to prove or rebut adulterous conduct of the wife, by other evidence.[14]

Against this backdrop, the present study through analysis of recent case laws across Supreme Court and High Courts, examines whether the contemporary judicial take on competing imperatives of legal legitimacy, scientific accuracy, and the best interests of the child in an era increasingly shaped by genetic certainty.

PART I. PRESUMPTION V. PROOF: DETERMINING LEGITIMACY UNDER THE LAW

"When it comes to privacy and accountability, people always demand the former for themselves and the latter for everyone else."[15]

Indian law, provides for varied degrees of presumption upon which proof would be dependent. While discretionary presumption under Section 4[16] in form of 'may presume' makes way for judicial discretion to regard a fact as proved or call for further proof, mandatory presumption in forms of 'shall presume' state that a court must presume the fact as proved unless it is disproved, thus provides for rebuttal inference. 'Conclusive proof; with the highest degree of irrebuttable legal presumption brings in legislative intent that once the foundational fact is established, no contrary evidence is admissible, thus even limiting judicial discretion.[17]

Legal presumptions, while designed to simplify probative value and advance certainty in adjudication, often generate significant complexity when applied to contested and fact sensitive disputes. This hold especially true in matrimonial disputes where questions of legal presumptions takes the central stage. Section 116 establishes legitimacy of a child born "during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."[18] This provision is founded on the presumption of public morality and public policy.[19] Further a court may presume existence of certain facts which it thinks "likely to have happened, regard being had to the common course of natural events, human conduct and public and private business"[20] including the presumption that that "if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him."[21] The law also provides "if any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it"[22]. While exercising this discretion, "court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable."[23]

No specific statutory provision provides for DNA or genetic testing in paternity disputes. Family Courts Act[24] vests Family Courts with wide discretion to receive any material, including scientific evidence such as DNA reports, notwithstanding the strict rules of evidence, subject to judicial control and fairness. An interlocutory application before the Family Court seeking a direction for genetic testing may be moved. Further, in civil proceedings, courts preserves inherent powers[25] to pass orders necessary for the ends of justice. Evidentiary considerations further arise under the Indian Evidence Act, 1872 (now replaced by the Bharatiya Sakshya Adhiniyam, 2023), under which courts determine the relevance and admissibility of scientific and expert evidence, including DNA reports. In addition, the authority to direct DNA testing has been shaped significantly through constitutional interpretation as part of the courts' duty to do complete justice under Articles 142 and 21 of the Constitution.

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[14] X v. Y, 2023 LiveLaw (Raj) 51, 26 May 2023.
[15] David Brin, The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?, (Basic Books reprint ed. 1999) (1998)
[16] Section 4, Bharatiya Sakshya Adhiniyam, 2023 (Replaced Section 4, Indian Evidence Act, 1872)
[17] Supra
[18] Section 116, Bharatiya Sakshya Adhiniyam, 2023 (Replaced Section 112, Indian Evidence Act, 1872)
[19] Sham Lal vs. Sanjeev Kumar, (2009) 12 SCC 454
[20] Section 119, Bharatiya Sakshya Adhiniyam, 2023 (Replaced Section 114, Indian Evidence Act, 1872)
[21] Section 114, Indian Evidence Act, 1872
[22] Section 152, Bharatiya Sakshya Adhiniyam, 2023 (Replaced Section 148, Indian Evidence Act, 1872)
[23] Section 148, Indian Evidence Act, 1872
[24] Section 14, Family Courts Act, 1984
[25] Section 151, Code of Civil Procedure, 1908

However, this power is exercised with caution, and courts have consistently held that DNA testing cannot be ordered as a matter of routine. Instead, it requires a strong prima facie case and a careful balancing of evidentiary necessity against concerns of privacy, dignity, legitimacy, and the welfare of the child.[26] Supreme Court[27] while accepting that the genetic testing as "most legitimate and scientifically perfect means" which the parties involves may use to establish assertion of infidelity or its rebuttal, recorded a caveat that an adverse presumption can be drawn against the wife in case she refuses comply with court's direction to undergo the DNA test, of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. *(discussed above),* thus preserving the right of individual privacy to the extent possible. In Kundu[28], the apex court held that "the presumption arising thereunder can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities". Blood test cannot be ordered as a matter of course, without a strong prima facie establishing non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. Caveat as to consequences of the ordering of blood test as to "branding a child as a bastard and the mother as an unchaste woman" and as completion to give sample of blood for analysis were marked out. Court in Kundu stated direction to conduct blood test as erroneous as parties failed to demonstrate that conducting DNA test could not have been avoided. The position has been further strengthen in *Sharda*[29], where it was reiterated that "a matrimonial court has the power to order a person to undergo medical test and such order would not be in violation of the right to personal liberty". Court should exercise such a power if the applicant has a strong prima facie case and if despite the order of the court, the respondent refuses medical examination, the court will be entitled to draw an adverse inference against him.

In an attempt to clarify its position on the tussle between tradition presumption and scientific advancement, the apex court in *Nandlal*[30], held that Section 112 was enacted at a time when scientific advancement in the field of DNA test was not as "sophisticated", thus the provision provides for conclusive proof on the satisfaction of the conditions, the same is rebuttable. Court elaborated that where the truth of a fact is known, there is no need or room for any presumption. "Thus, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."[31]

PART II. PRIVACY V. FAIR TRAIL: OVERLAPPING LIBERTIES

"The raison d'etre is the legislative concern against illegitimatizing a child. It is a sublime public policy that children should not suffer social disability on account of the laches or lapses of parents."[32]

Whilst accepting the above reasoning, courts in India have time and again stayed true to the public welfare legislative intent over procedural jargons. The reasoning finds compelling justification even in modern theories of family law child rights where social parenthood and the welfare of the child are preferred over purely biological facts. Scholars such as *Martha Albertson*[33] and *John Eekelaar*[34] argue that family law should prioritise caregiving relationships, emotional security, and the developmental interests of children rather than genetic certainty alone. This approach resonates with the child centred framework of the Convention on the Rights of the Child[35], particularly Article 3, which mandates that the best interests of the child shall be a primary consideration in all actions concerning children, and Article 8, which obliges States to respect and preserve a child's identity, including family relations. Courts have been regularly challenged to shield a child's legal status from challenges arising out of parental disputes, especially its right to privacy that can easily put child's identity and social belonging on stake.

In a matrimonial disputes concerning paternity, the *lis* is essentially between the spouses, and not between a spouse and the child whose legitimacy is questioned[36]. While in pursuit of adjudicatory fairness, courts have been often challenged with balancing it with independent rights and best interests of the child, who generally remains a non-party to the dispute. This often meets with rebuttal that a judgment in a matrimonial proceeding is a judgment *in rem* and thus any evidence to bring out the truth is germane to the matter and has to be permitted in view of fair trial.

[26] Goutam Kundu v. State of West Bengal, (1993) 3 SCC 418; Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women, (2010) 8 SCC 633; Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576; Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20.
[27] Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365
[28] Goutam Kundu v. State of West Bengal and Anr , 1993 SCC (3) 418
[29] Sharda vs Dharmpal, AIR 2003 SC 3450
[30] Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik, (2014) 2 SCC 576
[31] Ibid
[32] Kamti Devi v. Poshi Ram, (2001) 5 SCC 311, para 9.
[33] Martha Albertson Fineman, The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies (Routledge, 1995).
[34] John Eekelaar, Family Law and Personal Life (Oxford University Press, 2006).
[35] United Nations, Convention on the Rights of the Child, Articles 2, 3, 7, and 8
[36] Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, arising out of SLP (C) No.9855/2022 (SC)

On one side of the spectrum, effective adjudication has been constitutionally[37] and judicially[38] ensured through 'right to fair trial' as justice cannot be achieved unless the trial process allows proper presentation and testing of evidence[39]. Such right encompasses access to 'the best available evidence', that requires a party to put forward the best evidence in its possession and not rely on the weakness of the opponent[40]. Courts have accepted the view that modern trials require reliance on scientific and objective evidence failure to production of which may cause a court to draw adverse inferences[41]. Even in matrimonial, courts have accepting DNA testing as "most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity"[42] .

The other side of spectrum, privacy as judicially interpreted to be extension[43] of right of 'personal liberty'[44], can be defined "the state of being free from intrusion or disturbance in one's private life or affairs"[45], which can only be recognized if the benefit to society outweigh the costs of keeping the information private[46]. Privacy though a fundamentally guaranteed, it not absolute and can be subjected to restriction on the basis of compelling public interest.[47] Judicial approach, if there were a conflict between fundamental rights of two parties, is to prevail the right which advances public morality.[48] A law designed to achieve this object of interests of the general public, if fair and reasonable would not breach Article 21.[49]

Thus if a child's best interest is jeopardized by maintaining confidentiality the privilege may be limited. In *Zuniga v. Pierce*[50], while balancing these competing interests, court while observing "this is necessarily so because the appropriate scope of the privilege like the privilege itself, is determined by balancing the interests protected by shielding the evidence sought with those advanced by disclosure", held that party must demonstrate the 'legitimate need' of seeking access and the same cannot be secured through 'less intrusive source'. Though in instances where a blood test can serves the best interest of the child[51], it can be directed on a paternity issue or on any other issue. Recognizing genetic profiling as a extreme delicate issue, the courts have been cautious to allow tests only when they are eminently needed and not as a matter of course or in a routine manner [52]. The gatekeeping role thus falls on the courts to consider diverse aspects to conclusively determine the truth and pass such directions only when there is a strong prima-facie case in favour of the person seeking it. It includes showing caution on use of scientific advancements that causes invasion of right to privacy, being not merely prejudicial to the rights of the parties involved but may cause crippling effect on the child.[53]

PART III. RECENT TRENDS IN JUDICIAL APPROACH

As discussed in the preceding parts, Courts in India have time and again embraced genetic technique as admissible in evidence as a perfect science[54], stating it to be scientifically correct and reliable[55], even in matrimonial cases[56]. However, its impact on right of privacy of a child involved remains a point of deliberation where courts often find themselves with dilemma of striking a balance between victim's right to fair trial and preserving child's right of individual privacy.[57] Third part of the paper delves into contemporary judicial approach while carrying out critical analysis of recent pronouncements of the Supreme Court and High Courts across the country to examine the focal issues involved in appreciation of DNA or genetic evidence in matrimonial disputes in the ear of scientific integration.

Recent Judicial Trends- Supreme Court

[37] Article 21 of the Indian Constitution
[38] Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441; A.S. Mohammed Rafi v. State of Tamil Nadu, (2011) 2 SCC 764.
[39] Zahira Habibullah Sheikh v. State of Gujarat (2004) 4 SCC 158
[40] Gopal Krishnaji Ketkar v. Mohamed Haji Latif
[41] Tomaso Bruno v. State of Uttar Pradesh, AIR 2015 SC (Supp) 412
[42] Dipanwita Roy vs Ronobroto Roy, AIR 2015 SC 418
[43] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301.
[44] Article 21 of the Indian Constitution
[45] Sharda v. Dharmpal, (2003) 4 SCC 493
[46] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
[47] Govind v. State of Madhya Pradesh & Anr., (1975) 2 SCC 148
[48] Mr. 'X' v. Hospital 'Z' (1998) 8 SCC 296
[49] M. Vijaya v. The Chairman, Singareni Collieries and Ors. reported in AIR 2001 (AP) 502
[50] Zuniga v. Pierce,714 F.2d 632 (1983)
[51] Re L (An Infant) [1968] 1 All ER 20 (CA); B.R.B. v. J.B. [1968] 2 All ER 1023.
[52] Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women & Anr., (2010) 8 SCC 633
[53] Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449.
[54] Pantangi Balarama Venkata Ganesh vs State of A.P, 2009 (14) SCC 607; Nandlal Wasudeo Badwaik vs Lata Nandlal Badwaik, 2014 (2) SCC 576
[55] Amarjit Kaur vs Harbhajan Singh, (2003)10 SCC 228
[56] Dipanwita Roy vs Ronobroto Roy, AIR 2015 SC 418
[57] Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, arising out of SLP (C) No.9855/2022 (SC)

Recently in *Rajendran*[58], the apex court reiterated that "scientific evidence cannot be used for fishing or roving inquiries when statutory presumption remains unrebutted" and courts require strong evidence of non-access to compel genetic testing as amounts to "a serious intrusion into bodily autonomy and privacy under Article 21". It was outrightly rejected to direct genetic profiling where question of paternity had no "direct nexus" while stating that "scientific procedures, however advanced, cannot be used as instruments of speculation; they must be anchored in demonstrable relevance and compelling necessity." The case for 'eminent need' for intrusive act of genetic testing also finds strength from Ivan[59] , that advocates for only allowing DNA evidence when other evidence seems insufficient to ensure justice delivery., thus cannot be issued as a matter of routine to protect the child from stigma and uncertainty.

Aparna Ajinkya Firodia v. Ajinkya Arun Firodia[60], marked as one of the landmark pronouncements revesting genetic testing in matrimonial disputes, involved allegation of adultery to be proved using the scientific advancements. Wife in the matter argued strong statutory presumption protects social parentage over biological parentage and allowing the test would cause "major societal repercussions on the innocent child". The claims met with counter that "most material piece of evidence to establish the allegations of adultery is the DNA test" and the same "cannot be shut out on the ground of sensitivity or privacy". Taking a child-centric approach the bench observed that, "children have the right not to have their legitimacy questioned frivolously before a Court of Law. This is an essential attribute of the right to privacy" and established that genetic testing cannot be ordered routinely, requires strong prima facie to challenge the statutory presumption, given that plea of non-access has been raised and only where the controversy cannot be resolved with the one, while being mindful of its consequences on the child. Though a family court sustains power to direct for medical tests which would not amount to violation of Article 21, yet such orders cannot be passed "mechanically in each and every case". The apex court maintained that "children cannot be deprived of this entitlement to influence and understand their sense of self simply by virtue of being children". It was opined that it is undeniable that once a child is found illegitimate, it cause not only adverse impact on child psychologically, but also invites suffering owing to identity crisis. Major jurisprudential development justified that parent's reasoning may be several in denying the genetic testing it won't be reasonable to drawn an adverse inference in each and every cases. A mother may actually be attempting to protecting the best interests of the child in such denial. Thus only "exceptional and deserving cases" calls for indispensable testing to resolve the controversy.

Inayat[61], marked the Supreme Court's dissent from the lower court in allowing the genetic test while stating that "merely because something is permissible under the law cannot be directed as a matter of course, to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person" and may also be prejudicial to future of children. Similarly in *Ashok Kumar*[62], while retaining that "forcing an unwilling party to undergo DNA test impinges on personal liberty and right to privacy", a caveat that courts should ordinarily refrain from ordering blood tests given major societal repercussions was put up. While observing that balancing of interest and eminent need are required in such cases and it cannot be allowed for respondent to compel the plaintiff to adduce further evidence in his support. Court reasoned that the "possibility of stigmatizing a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy". While relying on *Puttaswamy*[63], retaliated that the Court should "examine the proportionality of the legitimate aims being pursued i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA test."

Recent Judicial Trends- High Courts

High Courts across India have maintained the findings in lines of Supreme Court guidelines on genetic testing. In *Sunil Singh*[64], where non-access was neither specifically pleaded nor attempted to establish, court outrightly rejected the test stating it cannot be ordered as a routine as may have the effect of bastardising the child by conclusively determining nonpaternity, statutory presumption thus remains intact. Courts have maintained that to enable one of the parties to the marriage to have the benefit of fair trial, the Court cannot sacrifice the rights and best interests of a third party namely, the child.[65] Orrisa high court has gone to the extent is stating that ordering a DNA test merely to challenge wife's statement as to a person is child of her deceased husband in a case where the marriage is not disputed, would amount to doubting her word without sufficient basis and "directing for DNA test of the child on the face of admission of the mother would be an insult to her motherhood"[66].

[58] R. Rajendran v. Kamar Nisha & Ors., 2025 SCC OnLine SC 2372, Judgment date: 10 November 2025
[59] Ivan Rathinam v. Milan Joseph, 2025 SCC OnLine SC 175, 28 January 2025
[60] Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, Arising out of SLP (C) No.9855/2022 (SC)
[61] Inayath Ali & Anr. v. State of Telangana & Anr., (2024) 7 SCC 822
[62] Ashok Kumar v. Raj Gupta and others, C.A No.6153/2021, (SC) (21-10-2021)
[63] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[64] Sunil Singh v. Anju Gupta Singh & Anr., 2026:UHC:2426-DB
[65] X v. Y, Civil Revision Petition No. 3164 of 2024, decided on 24 January 2026
[66] Golapi Majhi v. Bhabanishankar Budulal @ Kisan & Ors., CMP No. 758 of 2025

Approach toward the granting orders for genetic testing is being considered as a last resort instead of a preference. In Sujith[67], court pushed that, "in such circumstances, the parties should be directed to lead evidence to prove the dispute of factum of paternity and only when the court finds it impossible to draw an inference based on such an evidence or the controversy in issue cannot be resolved without DNA test, it may direct the DNA test and not otherwise". Allahabad High Court[68] refused ordering of genetic test on lines that a husband cannot seek to lighten or that burden of proof by forcing the opposite party to lead evidence as per his desire. "Merely because something is permissible under the law, cannot be directed as a matter of course to be performed particularly when a direction to that effect may encroach privacy and physical autonomy of a person".[69] Further, the burden to prove lies on the party litigating and court cannot compel a party to prove his case in the manner of genetic testing as suggested by the contesting party.[70]

Like the apex court, High Courts too have taken up child centric approach while adjudicating matrimonial disputes. Rajasthan High Court[71] held that "while choosing between the sanctity of marriage and sanctity of the childhood, the Court has no option but to tilt towards the sanctity of the life, i.e. tilting towards the sanctity of the childhood" and focused that "it is high time that the society and law realize the importance of the child and childhood vis-a-vis the matrimonial disputes, as losing and winning in a marriage is having a dwarfed impact, when it is compared with losing of childhood, in terms of victimizing the child or sacrificing his constitutional right of dignity, at the altar of matrimonial conflicts". Even in a case where DNA test of the child born to the victim as result of gang rape, Chhattisgarh High Court was of the opinion that the "baby is neither a party in the criminal appeals nor his status or paternity is required to be examined to determine the guilt of the appellants for commission of gang rape".[72]

On the contrary, various instances call for blood test to be granted for efficient administration of justice and courts though cautious , tend to direct the same in interest of the case. In *Kamla*[73] where sufficient pleadings non-access between husband and wife at the time of conceiving the child, court held that "it is a fit case where DNA test of the child should have been ordered by the Family Court and the Family Court has not erred in ordering DNA test of the child". Similarly, in a recent ruling of Kerala High Court[74], where there is prima facie evidence indicating long cohabitation between a man and a woman, a plea seeking direction to the man to subject himself to DNA Test for determining their alleged child's paternity cannot be brushed aside, when a prima facie case of alleged immoral life is made out. Court held that: "True that an illegitimate child is also eligible for maintenance allowance but, for that paternity is a very relevant aspect to be established so as to enable the court to direct payment from the respondent who was alleged as his father".

FINDINGS AND CONCLUSION

This doctrinal analysis of Supreme Court and High Court jurisprudence on genetic or DNA testing in matrimonial disputes reveals a structured, multi-layered and constitutionally conditioned legal framework rather than a linear doctrinal evolution. The recent judicial approach collectively realizes the intricacies between strong statutory presumption, scientific proof, and constitutional rights and attempts to strike a reasonable balance thereof.

First, judiciary consistently affirms that Section 116 (112 of Indian Evidence Act) constitutes a conclusive presumption of legitimacy, which operates to protect legal parentage over biological uncertainty. Through *Rajendran*[75] (2025 SC), *Ivan*[76] (2025 SC) and *Firodia*[77] (2023 SC), courts have reaffirmed and maintained that legitimacy is a conclusive statutory presumption overriding biological truth unless strictly rebutted, carrying forward the established norms in *Farooq*[78] (1987 SC), and *Banarsi*[79] (2005 SC).

Second, non-access during the relevant period of conception is the exclusive doctrinal gateway for rebutting the statutory presumption. Decisions such as *Firodia*[80] (2023 SC), *Kamla*[81] (MPHC 2026), X v. Y (2023) and *Rajendran*[82] (2025 SC) confirm that courts require a pleaded and prima facie foundation of non-access between the parties at the time the child is begotten before even considering DNA testing requests.

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[67] Sujith Kumar S v. Vinaya V S, OP(CRL.) NO. 631 Of 2023 (Kerela High Court)
[68] Sachin v. Sangeeta Devi, 2023 LiveLaw (AB) 320.
[69] Afan Ansari vs. The State of Jharkhand , W.P. (Cr.) No. 536 of 2022 (Jhar HC)
[70] Sukhdev Singh and Others Versus Jaswinder Kaur, CR-432-2019 (O&M) (P&H HC)
[71] X v. Y, 2023 LiveLaw (Raj) 51 (Raj HC).
[72] Dilesh Nishad v. State of Chhattisgarh, Criminal Appeal Nos. 1266 & 1400 of 2019 (CG HC)
[73] Kamla Patel v. Govind Bahadur 2026 MPHC (Jabalpur) 5428 of 2023
[74] XXX v. YYY & Anr, OP(CRL.) NO. 508 OF 2021
[75] Ibid 56
[76] Ibid 57
[77] Ibid 58
[78] Dukhtar Jahan v. Mohammed Farooq, (1987) 1 SCC 624
[79] Ibid 51
[80] Ibid 58
[81] Ibid 71
[82] Ibid 56

Third, the judiciary has shown openness towards accepting scientific accuracy as perfect, yet prefer legal presumption, showing science being legally subordinated to statutory rules. *Nandlal*[83] (2014 SC) alongside *Firodia*[84] (2023 SC), *Ivan*[85] (2025 SC), and *Rajendran*[86] (2025 SC), show that DNA's scientific conclusiveness does not override Section 116 in legitimacy disputes. They firmly characterises genetic testing as an exceptional evidentiary mechanism rather than a routine fact finding tool, permissible only when evidentiary insufficiency and necessity are clearly demonstrated.

Fourth, the jurisprudence develops a multi-pronged judicial threshold test for ordering DNA testing, requiring (i) a plea of non-access, (ii) prima facie material, (iii) evidentiary insufficiency, and (iv) demonstrable necessity. This structured threshold is reinforced in *Firodia*[87] (2023 SC), *Ivan*[88] (2025 SC), Sunil[89] (2026 HC), *Kamla*[90] (2026 HC), and Ashok (2021 SC). Fifth, the courts situate DNA testing within the constitutional framework of Article 21, recognising it as an intrusion into bodily autonomy, dignity, and informational privacy. In *Sharda* (2003 SC), read with *Inayath*[91] (2022 SC), *Ashok*[92] (2021 SC), and *Rajendran*[93] (2025 SC), the jurisprudence applies proportionality based reasoning requiring necessity and least restrictive means before compelling genetic testing.

Sixth, a distinct child centric jurisprudential strand emerges, where the 'best interests of the child' operates as a substantive limiting principle. In *Firodia*[94] (2023 SC), X v. Y (Kerala HC 2023); *Golapi*[95] (2025 Orissa HC), and, courts emphasise that legitimacy disputes risk stigma, identity harm, and psychological harm to the child, thereby constraining evidentiary inquiry in lines of *Dukhtar*[96](1987 SC).

Seventh, the jurisprudence clarifies that refusal to undergo DNA testing does not automatically attract adverse inference under Section 114(h) of the Evidence Act. While *Dipanwita*[97] (2015 SC) permits adverse inference in limited adultery contexts, subsequent decisions such as *Firodia*[98] *(*2023 SC) and *Sukhdev*[99] (2022 P&H HC) restrict its application in light of privacy and child welfare concerns. Further, it reinforces that burden of proof remains firmly on the party alleging non-paternity or adultery, and DNA testing cannot be used as a substitute for discharging this burden.

The jurisprudence consistently reinforces that the burden of proof remains firmly on the party alleging non-paternity or adultery. Courts have repeatedly held that mere suspicion, conjecture, or unsubstantiated allegations are insufficient to rebut the legal presumptions attached to legitimacy and marital fidelity. Consequently, the party making such claims must adduce cogent and convincing evidence capable of displacing these presumptions before any adverse inference can be drawn. Furthermore, judicial precedents emphasize that genetic testing is not intended to serve as a substitute for proof where the alleging party has failed to establish a prima facie case. The courts have exercised caution in ordering genetic tests, recognizing the significant implications such tests may have on an individual's privacy, dignity, and family relationships. As a result, genetic evidence is generally viewed as an aid to the adjudicatory process rather than a mechanism to facilitate speculative or fishing inquiries.

In conclusion, the legal position reflects a careful balance between scientific advancements and established evidentiary principles. While DNA testing can provide highly reliable biological evidence in appropriate cases, its use remains subject to judicial scrutiny and cannot relieve a party of the obligation to discharge the burden of proof. The judiciary has been cautious enough to put a cogent caveat on its use only when a strong prima facie case is made out[100] owing it to be "extremely delicate and sensitive aspect when it gets down to human relationship"[101], thus to be sanctioned only when there is an "eminent need"[102].

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[83] Ibid 28
[84] Ibid 58
[85] Ibid 57
[86] Ibid 56
[87] Ibid 58
[88] Ibid 57
[89] Ibid 62
[90] Ibid 70
[91] Ibid 59
[92] Ibid 60
[93] Ibid 56
[94] Ibid 58
[95] Ibid 64
[96] Ibid 76
[97] Ibid 25
[98] Ibid 58
[99] Ibid 68
[100] Sharda vs Dharmpal, AIR 2003 SC 3450; Goutam Kundu v. State of WB and Anr, (1993) 3 SCC 418
[101] Sharda vs Surat Singh, Cr. MMO No. 198 of 2016 (HP HC)
[102] Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women, (2010) 8 SCC 633