

Establishing or denying lineage through DNA fingerprinting in Islamic jurisprudence

Dr. Issam Kharkhache

Faculty of Islamic Sciences, University of Algiers 1, Algeria, E-mail: issamkharkhache12@gmail.com

Received: 09.02.2026; Accepted: 25.06.2026; Published: 05.09.2026

Abstract:

This study focuses on the methods of establishing and denying lineage in Islamic jurisprudence, as well as the position of DNA fingerprinting in this context. It defines DNA fingerprinting and establishes that it constitutes conclusive evidence for verifying biological lineage. DNA fingerprinting can be used to establish lineage, or in cases involving newborns in hospitals, clinics, maternity centres and childcare centres, where there is suspected confusion; in cases involving test-tube babies; in cases of *wat' al-shubha* (intercourse under mistaken circumstances); and in cases involving a person of disputed lineage.

As for denying lineage after it has been established, only one method is accepted: *li'ān* (mutual imprecation). DNA fingerprinting cannot be used independently to deny lineage, nor can it be used to deny the lineage of a person established by any other legally recognised evidence under Islamic law.

Keywords: DNA fingerprinting, establishing lineage, denying lineage.

Introduction:

Praise be to Allah, who created human beings in the best possible form, endowing them with the ability to hear, see and think, so that they might be among the grateful. He has made all that is in the heavens and the earth subject to him, and all comes from Him. Indeed, there are signs in this for those who reflect. To proceed:

Rapid advances in scientific development in the field of medicine have given rise to new issues that contemporary Islamic jurisprudential reasoning must address. The most prominent of these relate to modern forms of evidence that were previously unknown, such as DNA fingerprinting, discovered in 1985 AD. This has increased researchers' interest in clarifying the Islamic legal ruling on the extent to which DNA

La determinación o impugnación de la filiación mediante la huella genética en la jurisprudencia islámica

Dr. Issam Kharkhache

Facultad de Ciencias Islámicas, Universidad de Argel 1, Argelia. Correo electrónico: issamkharkhache12@gmail.com

Recibido: 09.02.2026 · Aceptado: 25.06.2026 · Publicado: 05.09.2026

Resumen:

Este estudio examina los métodos de determinación e impugnación de la filiación en la jurisprudencia islámica, así como el lugar que ocupa la huella genética en este contexto. Define la huella genética y sostiene que constituye una prueba concluyente para verificar la filiación biológica. Esta técnica puede utilizarse para determinar la filiación, particularmente cuando se sospechan confusiones de recién nacidos en hospitales, clínicas, maternidades y centros de atención infantil; en casos de fecundación in vitro; en supuestos de *wat' al-shubha* —relaciones sexuales mantenidas bajo la creencia errónea de su licitud—; y cuando la filiación de una persona es objeto de controversia.

En cuanto a la impugnación de una filiación previamente establecida, únicamente se admite el *li'ān* —procedimiento de juramentos e imprecaciones recíprocas entre los cónyuges—. La huella genética no puede utilizarse de manera independiente para impugnar la filiación, ni para negar una filiación establecida mediante cualquier otro medio de prueba reconocido por el derecho islámico.

Palabras clave: huella genética; determinación de la filiación; impugnación de la filiación.

fingerprinting constitutes admissible evidence for establishing or denying lineage, in accordance with the rules and objectives of Islamic law.

Importance of the Topic

This topic is important because it lies at the intersection of Islamic legal texts and the rapidly advancing field of medicine. This is not merely an abstract, theoretical study, but a religious, practical and scientific necessity. Its importance can be summarized in the following areas:

- Keeping pace with contemporary medical issues: Employing Islamic legal evidence, which is limited in wording, to address an unlimited number of events and cases.
- Achieving the objectives of Islamic law. This study clarifies the extent to which these findings align with the objectives of Islamic law in preserving life, intellect, religion, lineage and property.
- Establishing a methodological foundation for contemporary ijtihad: This is achieved by linking subsidiary issues to fundamental principles, developing the ability to reason from evidence and deriving the views of classical and contemporary jurists and reconciling them.

It is clear, therefore, that the importance of this study extends beyond clarifying the Islamic legal ruling to encompass the establishment of a religious, ethical, legal and social framework for the use of DNA fingerprinting that preserves the human being's religion, life, lineage, dignity and identity.

Problem Statement:

When DNA fingerprinting was adopted by security agencies, particularly in developed countries, as a means of tracking criminals and identifying charred or decomposed corpses, questions were raised about the ethics of using it to establish or deny lineage. Can it be used to establish or deny maternity or paternity? This question arises in cases involving accusations of pregnancy resulting from *waṭ' al-shubha* (intercourse under mistaken circumstances), adultery, mixed-up newborns in hospitals, missing and abducted children, and errors in in vitro fertilisation. DNA fingerprinting can be used to verify an individual's identity and to verify biological parentage. This distinguishes it from legally recognised parentage or legal lineage (*nasab shar'ī*)¹. Alternatively, is DNA fingerprinting merely corroborative evidence that supports one of the two positions without being binding? Can it replace the methods established by Islamic legal texts for establishing or denying lineage?

To address these issues, I took an inductive and analytical approach, examining Islamic legal texts from the Holy Qur'an and the Prophetic Sunnah relating to the establishment and denial of lineage. I then analysed these texts by breaking down the issue into its constituent elements and relevant characteristics, clarifying

¹- Legal lineage is the lineage resulting from a valid or invalid marriage or from sexual intercourse under a mistaken belief of lawfulness. Biological lineage, on the other hand, refers to the person whose semen gives rise to the child. It is therefore unrelated to whether a marriage contract exists and to the nature of the relationship between the man and the woman, whether lawful or unlawful.

the points of disagreement among jurists and analysing the effective cause and basis of the legal ruling, in order to determine its applicability to DNA fingerprinting in terms of establishing and denying lineage.

Research Plan:

First section: The Medical and Jurisprudential Characterisation of DNA Fingerprinting

First requirement: Definition of DNA fingerprinting

First subsection: Linguistic definition

Second Subsection: Terminological definition

Second requirement: The position of DNA fingerprinting among circumstantial evidence

First Subsection: Definition of Circumstantial Evidence and Its Legitimacy

Second Subsection: Jurists' opinions on the evidentiary strength of DNA fingerprinting as circumstantial evidence.

Second Section: The Ruling on the Use of DNA Fingerprinting in Establishing Lineage

First requirement: Definition of lineage and the legal methods for establishing it

First subsection: Definition of lineage

Second Subsection: The legal methods for establishing lineage

Second requirement: The adoption of DNA fingerprinting in establishing lineage and its fields of application

First Subsection: The permissibility of relying on DNA fingerprinting

Second Subsection: The fields of application and conditions for establishing lineage through DNA fingerprinting

Third requirement: The status of DNA fingerprinting as an evidentiary means

First Subsection: Prioritising DNA fingerprinting over other legal methods

Second Subsection: DNA fingerprinting is governed by the same ruling as qiyāfah (inference of lineage through physical resemblance).

Third Subsection: Cases in Which Lineage May Not Be Established through DNA Fingerprinting

Third section: The Ruling on the Use of DNA Fingerprinting to Deny Lineage

First requirement: Methods of Denying Lineage in Islamic Jurisprudence

First Subsection: The concept of li'an (mutual imprecation) and evidence for its legitimacy

Second Subsection: The Procedure of Li'an and Its Effects

Second requirement: The extent to which DNA fingerprinting can be used to deny lineage

First Subsection: The ruling on relying solely on DNA fingerprinting instead of li'an to deny lineage

Second Subsection: The ruling on using DNA fingerprinting to verify the validity of established lineage.

Conclusion:

First Section: The Medical and Jurisprudential Characterisation of DNA Fingerprinting

Before addressing the evidentiary value of DNA fingerprinting in establishing or denying lineage, it is necessary to define the concept from medical and Islamic legal perspectives, and determine its status among circumstantial evidence.

First Requirement: Definition of DNA fingerprinting

First Subsection: Linguistic definition

1. The term 'fingerprint' is derived from the Arabic word 'al-basm', which originates from the verb 'basama', meaning 'to imprint' or 'to leave a mark'. A fingerprint is the mark left by a finger or thumb when pressed against an object. The verb *baṣama* means 'to seal with the tip of one's finger'. A fingerprint is the impression made by a finger, and the term refers to the impressions left by fingers when they come into contact with a smooth surface. These impressions are exact reproductions of the patterns of friction ridges that cover the skin of the fingers and are unique to each individual. The term has also been used figuratively to refer to any distinctive mark or trace by which an individual can be identified².

2. The term 'hereditary' is derived from 'inheritance', which originates from the verb *waritha*, meaning 'that which a person leaves behind or bequeaths to their heirs'³. Here, it refers to the transmission of traits or characteristics from parents to children, or to what is passed down by inheritance from one generation to the next.

Second subsection: Terminological definition

1. Medical characterisation of DNA fingerprinting:

Modern medical discoveries have progressed from identifying this characteristic of the human body to discovering many others and understanding their influence on heredity through bodily fluids such as blood, hair, semen and urine.

²- Lisan al-Arab): Jamal al-Din Muhammad ibn Abdullah ibn Mukarram Ibn Manzur, Beirut: Dar Sadir, Vol. 12, p. 50. The Intermediate Dictionary (Al-Mu'jam al-Wasit): Ibrahim Anis and his colleagues, Islamic Heritage Revival, Qatar National Printing Presses, 1985, Vol. 1, p. 60.

³- Same source, Vol. 2, p. 200.

Medical discoveries have demonstrated that the nucleus of a human cell contains 46 chromosomes. These chromosomes consist of genetic material — deoxyribonucleic acid (DNA) — that makes up genes. Each chromosome contains a large number of genes, with approximately one hundred thousand genetic units in a single human cell. These genes control human characteristics and the way the human body functions, as well as performing other regulatory functions.

Modern medical experiments using highly advanced and precise technological methods have demonstrated that every human being possesses a unique genome, distinguishing them from everyone else. This genome is similar to fingerprints in that genetic traits cannot be identical between one person and another, even if they are twins.”

For this reason, the term ‘DNA fingerprinting’ was coined to refer to establishing a person’s identity based on a sample of deoxyribonucleic acid (DNA), which a person inherits from their parents. Every individual carries 46 chromosomes in their cells, with half of these chromosomes (23) being inherited from the father through the sperm and the other half (23) being inherited from the mother through the ovum.

Each chromosome consists of nucleic acid genes known as DNA and has two strands. An individual inherits one strand from their father and the other from their mother. This results in chromosomes that are specific to that individual, which do not fully match those of either parent, but rather constitute a mixture of both. Through this mixture, the individual acquires an independent genetic identity that is distinct from the chromosomes of either parent while retaining certain similarities with them. However, an individual’s chromosomes never exactly match those of either parent, let alone those of anyone else.

Modern medical scientists believe that they can establish or deny paternity or filiation through procedures involving the examination of genetic material. Experimental medical research has demonstrated that the success rate of establishing or denying lineage through DNA fingerprinting is 100% in cases of exclusion. In cases of establishing lineage, however, it approaches absolute certainty, reaching approximately 99%⁴.

2. Jurisprudential Characterisation of DNA Fingerprinting

The definitions of DNA fingerprinting provided by Islamic jurists vary. The following is one example:

First definition: By His Eminence Sheikh Farid Wasel, former Mufti of the Arab Republic of Egypt: ‘DNA fingerprinting is the process of identifying a human being through one or more segments of DNA concentrated in the nucleus of any cell in the human body’⁵.

⁴- Genetic Fingerprinting and the Extent of Its Legitimacy in Establishing Lineage and in Criminal Cases: Omar ibn Muhammad al-Sabil, Journal of the Islamic Fiqh Academy, Issue 15, Year 14, 1424 AH/2003, pp. 28–29. See also: Cloning between Science and Religion: Dr. Abd al-Hadi Misbah, Egyptian Lebanese House, Beirut, 2nd ed., 1419 AH/1999, p. 105.

⁵- Genetic Fingerprinting and Its Fields of Application, by Sheikh Farid Wasil, Journal of the Islamic Fiqh Academy, Issue 17, Year 15, 1425 AH/2003, p. 59.

Second definition: By Dr Wahbah al-Zuhayli: 'It is the genetic material found in the cells of all living organisms. Like blood analysis, fingerprints, seminal fluid, hair or tissues, it demonstrates the extent of similarity or difference between two things'⁶.

Third definition: By Professor Arif Ali Arif: 'Gene fingerprinting refers to the variation in the genetic structure of the intron region⁷, which is entirely unique to each individual and inherited'⁸.

Based on these definitions, an appropriate definition of DNA fingerprinting can be derived as follows: It is the detailed chemical composition of the DNA that distinguishes one person from another and carries characteristics of individual identity and biological parentage.

Second requirement: The position of DNA fingerprinting among circumstantial evidence.

First branch: Definition of circumstantial evidence and its legitimacy

1. Circumstantial evidence linguistically: The word is derived from 'قرن الشيء بالشيء', meaning to bind one thing to another and connect it to it, such as tying two camels with one rope, combining Hajj and Umrah, or putting two dates or two morsels of food together when eating. The term also carries the meaning of accompaniment and association. Hence, a wife is called a 'qarina', and a husband is called a 'qarin'⁹.

Terminologically: Any apparent indication that accompanies and points to something hidden¹⁰.

2. The legitimacy of circumstantial evidence: Circumstantial evidence is generally legitimate, as indicated by the words of Allah Almighty: 'And they brought his shirt stained with false blood' (Surah Yusuf, verse 18).

Al-Qurtubi stated in his exegesis: 'When they intended to use the blood as proof of their innocence, Allah revealed another sign that contradicted it: the shirt was intact and undamaged, as a wolf could not have devoured Yusuf while he was wearing the shirt and left it undamaged.' They agreed that Yaqub (peace be upon him) realised they were lying from the fact that the shirt was intact. Scholars have therefore relied on this verse to establish the use of indications in many matters of jurisprudence. Thus, when indications and signs conflict, an observer must consider them and judge whichever is stronger based on the preponderance

⁶- Genetic Fingerprinting and Its Fields of Application, Proceedings and Research Papers of the Sixteenth Session of the Islamic Fiqh Academy in Makkah al-Mukarramah, 1422 AH/2002, Vol. 3, p. 15.

⁷- The intron region is the region in which variations appear. It is a location in DNA where these differences occur, because 99.9% of DNA is identical in all human beings, whereas differences between individuals occur in only 0.1% of it.

See: Forensic Biology and Genetic Fingerprinting: Ahmad Muhammad Khalil, Ajman Journal of Science and Technology, Ajman University, Issue 1, 1421 AH/2001, Vol. 6, p. 82.

⁸- DNA Fingerprinting and Its Role in Criminal Evidence (An Islamic Perspective), Dar al-Tajdid for Printing, Publishing and Translation, Malaysia, 1st ed., 1422 AH/2002, p. 14.

⁹- Lisan al-Arab: Ibn Manzur, Vol. 13, p. 331, entry under the root Q-R-N.

¹⁰- General Introduction to Islamic Jurisprudence: Mustafa Ahmad al-Zarqa, Dar al-Qalam, Damascus, 1st ed., 1418 AH/1998, Vol. 2, p. 936.

of evidence, which constitutes the strength of suspicion. There is no disagreement regarding judgement on this basis, as stated by Ibn al-Arabi¹¹.

Second Branch: Jurists' opinions on the evidentiary strength of DNA fingerprinting

Circumstantial evidence can be categorised as either conclusive or presumptive. Conclusive circumstantial evidence constitutes independent proof and reaches the level of certainty, thereby serving as a substitute for direct evidence. Presumptive circumstantial evidence does not constitute independent evidence, however, and is instead used for corroboration and to determine the preponderance of evidence¹².

This raises the question of where DNA fingerprinting stands among circumstantial evidence: is it conclusive or presumptive? To answer this question, jurists have formed two groups:

1. DNA fingerprinting as conclusive circumstantial evidence: This group includes Sheikh Farid Wasel, Professor Ali Muhyiddin al-Qaradaghi, Professor Saad al-Din Hilali and Professor Abd al-Rashid Muhammad Amin Qasim. They argue that DNA fingerprinting has conclusive scientific significance in establishing a person's identity, and that it constitutes a legally recognised basis for resolving disputes over lineage¹³.

2. DNA fingerprinting does not reach the level of conclusive circumstantial evidence. This is the view adopted by Dr Omar bin Muhammad al-Sabil, who stated:

'Modern scientific theories, whether medical or otherwise, remain subject to doubt and scrutiny, regardless of the degree of precision and certainty regarding their validity in the view of specialists. Experience has shown that scientific theories in various fields, including medicine, have been disproved despite having previously been considered scientifically certain. How many medical theories were once regarded by physicians as unquestionably valid, only to be rendered obsolete by advances in medical science? This is a well-known and established fact, which requires jurists and researchers in Islamic law to exercise caution when examining them and not to rush into adopting scientific theories as evidence that is legally equivalent or comparable, or to replace established legal evidence with such theories¹⁴.'

'They are indications that may support it, or circumstantial evidence that may point to it. Islamic law takes precautions regarding lineage and favours its establishment, accepting even the slightest basis for proving

¹¹- The Comprehensive Collection of Qur'anic Rulings: Dar Alam al-Kutub, Riyadh, Kingdom of Saudi Arabia, edited by Hisham Samir al-Bukhari, 1423 AH/2003 edition, Vol. 9, p. 150.

¹²- See: General Introduction to Islamic Jurisprudence, by al-Zarqa, Vol. 2, pp. 936–937; and The Evidentiary Value of Circumstantial Evidence in Islamic Jurisprudence: Muhammad Ahmad Hasan Qudah, Journal of Studies, Deanship of Academic Research, University of Jordan, Vol. 30, Issue 2, November 2003, p. 465.

¹³- See: Genetic Fingerprinting and Its Fields of Application, by Professor Saad al-Din Hilali, Vol. 3, p. 65; Genetic Fingerprinting and Its Evidentiary Value, by Professor Abd al-Rashid Muhammad Amin Qasim, Al-Adl Journal, Saudi Ministry of Justice, Issue 23, Rajab 1425 AH, p. 61; Genetic Fingerprinting and Its Fields of Application, by Sheikh Farid Wasil, p. 65; and Genetic Fingerprinting from the Perspective of Islamic Jurisprudence, by Professor Ali Muhyi al-Din Qara Daghi, Journal of the Islamic Fiqh Academy, Issue 16, Year 14, 1424 AH/2003, p. 55.

¹⁴- Genetic Fingerprinting and the Extent of Its Legitimacy in Establishing Lineage and in Criminal Cases: Omar ibn Muhammad al-Sabil, p. 55.

it.' However, once lineage has been established, strictness is applied in denying it, and it may only be denied on the basis of the strongest evidence¹⁵.

This is further supported by what Ibn Qudamah stated: 'Lineage is treated with caution when establishing it, and it can be established by the slightest evidence. This necessarily entails strictness when denying it. It can only be denied by the strongest evidence'.

Supporters of this view have justified their position by arguing that DNA fingerprinting is inherently conclusive. However, in certain circumstances, its evidentiary value is diminished. This is because the analysis is conducted in the judge's absence and the judge does not directly ascertain the qualifications of those working in the laboratory, so it lacks an impact on the judge's own assessment. Additionally, the surrounding circumstances and the complex procedures involved in the analysis have diminished its evidentiary value¹⁶.

3. At its Eleventh Symposium on Genetic Engineering, the Human Genome, and Gene Therapy, held in Kuwait from 23 to 25 Jumada al-Thani 1419 AH (corresponding to 13–15 October 1998), the Islamic Organization for Medical Sciences adopted an intermediate position regarding whether DNA fingerprinting is conclusive or presumptive. It concluded that:

'From a scientific perspective, DNA fingerprinting is an almost infallible method of verifying biological parentage and identifying individuals, particularly in the field of forensic medicine. It reaches the level of conclusive circumstantial evidence accepted by the majority of jurists in cases other than those involving the legally prescribed hudud punishments'¹⁷.

This position was endorsed by the Islamic Fiqh Council, which is affiliated with the Muslim World League, on the condition that all its requirements are fully satisfied. The recommendations stated:

'When DNA fingerprinting fulfils all the required conditions and human error is avoided, its results are almost conclusive in establishing or denying the attribution of children to their parents, with results reaching 99.9%'¹⁸.

The second section: The Ruling on the Use of DNA Fingerprinting to Establish Lineage

The first requirement: Definition of lineage and the legal methods for establishing it

First Branch: Definition of lineage

1. Linguistic definition:

¹⁵- The Book of Sufficiency (Al-Mughni): Abdullah ibn Ahmad ibn Qudamah al-Maqdisi, Riyadh Modern Library, Riyadh, Vol. 5, p. 769.

¹⁶- See: Genetic Fingerprinting and Its Impact on Jurisprudential Rulings, Professor Khalifa Ali al-Kaabi, published master's thesis, Dar al-Jami'ah al-Jadidah for Publishing, Alexandria, Egypt, 2004, p. 205.

¹⁷- See: Discussion Session on Genetic Engineering, the Human Genome and Gene Therapy, website of the Islamic Organization for Medical Sciences, https://theislamicmedicine.org/?utm_source=chatgpt.com

¹⁸- See: Report of the Scientific Committee on Genetic Fingerprinting, Journal of the Islamic Fiqh Academy, Issue 16, Year 14, 1424 AH/2003, p. 292.

Nasab (lineage) means kinship. It is also said to refer specifically to paternal ancestry. It may also refer to affiliation with a country or profession¹⁹.

2. Terminological definition:

Early scholars did not provide a precise definition of lineage, except for what was mentioned incidentally in the chapters on inheritance concerning the causes of succession. The scholar al-Baqari defined it as follows: 'It is kinship, and what is meant by it is the womb. This term encompasses everyone with whom you share a kinship relationship, whether close or distant, through the father's or mother's side'²⁰.

Some contemporary researchers have defined it according to its specific terminological meaning: kinship through the father. This is because a person is only attributed to their father. One of them stated: 'It is a legal status relating to the relationship between one person and another, in that the person originated from the womb of a woman who was in a valid lawful marriage or a valid form of ownership, or something regarded as equivalent, with the pregnancy resulting from the person to whom the child is attributed'²¹.

Second branch: Legal Methods for Establishing Lineage

Lineage can be established through the marital bed, acknowledgement of paternity, evidence, physiognomic attribution or drawing lots. The first three methods are agreed upon by scholars; the fourth method is upheld by the majority; and the fifth method has been accepted by some scholars²².

1. The Marital Bed:

This refers to a valid marital bed or something considered equivalent. This refers to a marriage contract recognised under Islamic law, in which the pillars and conditions are fulfilled and the impediments are absent. What is considered equivalent to a valid marriage contract includes an invalid marriage contract whose validity is disputed, as well as sexual intercourse under a mistaken belief in its various forms. In matters relating to establishing the lineage of a child resulting from such intercourse, it is treated the same way as intercourse within a valid marriage.

Thus, if a woman gives birth to a child who could have been fathered by a man of the relevant age after six months have elapsed since intercourse, the child's lineage is established by consensus in favour of the person to whom the marital bed belongs, provided that the child is born during the marriage, either in fact or

¹⁹- Lisan al-Arab, Ibn Manzur, Vol. 1, p. 755.

²⁰- Al-Baqari's Marginal Notes on al-Mardini's Commentary on al-Rahbiyyah: Muhammad ibn Umar al-Baqari al-Shafi'i, Dar al-Qalam, Damascus, 3rd ed., 1406 AH/1986, p. 32.

²¹- Establishing Lineage: Yasin ibn Nasir al-Khatib, Dar al-Bayan al-Arabi, Jeddah, 1st ed., 1407 AH/1987, p. 10.

²²- Provisions for the Hereafter in the Guidance of the Best of Creation: Muhammad ibn Abi Bakr ibn Qayyim al-Jawziyyah, Al-Risalah Foundation, 3rd ed., 1405 AH/1985, edited by Shu'ayb al-Arna'ut and Abd al-Qadir al-Arna'ut, Vol. 5, p. 410.

legally, as in the case of women observing a waiting period . This is based on the saying of the Prophet (peace and blessings be upon him): 'The child belongs to the marital bed, and the adulterer is deprived'"²³.

2. Acknowledgement of Paternity:

Also referred to as acknowledgement of lineage, there are two types: one that binds only the person making the acknowledgement, such as acknowledgement of sonship or fatherhood; and one that binds the person making the acknowledgement in relation to another, such as acknowledgement of brotherhood or unclehood.

For an acknowledgement of lineage to be valid, the person making the acknowledgement must be an adult of sound mind. Therefore, an acknowledgement made by a minor or an insane person is invalid. The person making the acknowledgement must not explicitly state that the person whose lineage is being acknowledged is their child born of adultery. If they do, their acknowledgement will not be accepted because adultery does not constitute a basis for establishing lineage. The person whose lineage is being acknowledged must also have an unknown lineage, since the previously established lineage of a person with a known lineage cannot be invalidated under any circumstances. Furthermore, the acknowledgement of lineage cannot be disputed, because if it is disputed, neither party has greater entitlement merely by virtue of making a claim. Therefore, a factor favouring one of them is required²⁴.

3. Evidence:

This refers to testimony. A claimant's lineage is established on the basis of trustworthy witnesses' testimony confirming the validity of the claim. Scholars have unanimously agreed that lineage is established for the claimant through the testimony of two upright men. However, they have differed on the establishment of lineage through other forms of testimony, such as the testimony of one man and two women, four upright women, or one man accompanied by the claimant's oath. Each of these cases has been upheld by a group of scholars. Nevertheless, the majority view among scholars, including the Malikis, Shafi'is and Hanbalis, is that lineage can only be established through the testimony of two upright men²⁵.

²³- Reported by al-Bukhari in his Authentic Collection (Sahih al-Bukhari), Book of Inheritance, Chapter: "The Child Belongs to the Marital Bed, Whether the Woman Is Free or a Slave," Hadith No. 6368 according to al-Bugha's numbering, Vol. 6, p. 2481.

²⁴- See: The Excellent Principles in the Arrangement of Legal Rules : Ala al-Din Abu Bakr ibn Mas'ud al-Kasani, Dar al-Kitab al-Arabi, Beirut, 2nd ed., 1402 AH/1982, Vol. 7, p. 228; Al-Zurqani's Commentary on Khalil's Abridgment: Abd al-Baqi al-Zurqani, Dar al-Fikr, Beirut, 1398 AH/1978, Vol. 6, p. 105; and The Sufficient Guide for Understanding the Meanings of the Words of al-Minhaj (Mughni al-Muhtaj): Muhammad al-Shirbini al-Khatib, Dar Ihya al-Turath al-Arabi, Beirut, Vol. 2, p. 258.

²⁵- See: The Guidance: A Commentary on the Beginning of the Beginner : Burhan al-Din ibn Ali ibn Abi Bakr al-Marghinani, Mustafa al-Babi al-Halabi Library and Printing House, Egypt, Vol. 1, p. 117; Al-Kharashi's Commentary on Khalil's Abridgment: Abu Abdullah Muhammad al-Kharashi, Dar Sadir, Beirut, Vol. 7, p. 200; The Refined Book on the Jurisprudence of Imam al-Shafi'i (Al-Muhadhdhab): Ibrahim ibn Ali al-Shirazi, Dar al-Ma'rifah for Printing and Publishing, Beirut, facsimile of the second edition, 1379 AH/1959, Vol. 2, p. 334; and The Concise Book, Together with the Extensive Commentary and the Book of Equity (Al-Muqni' ma'a al-Sharh al-Kabir wa-al-Insaf): Muwaffaq al-Din ibn Qudamah, Abd al-Rahman ibn Qudamah, and Ali ibn Sulayman al-Mardawi, Dar Hijr for Printing, Publishing and Distribution, 1st ed., 1414 AH/1993, edited by Dr. Abdullah al-Turki and Dr. Abd al-Fattah al-Hilu, Vol. 30, p. 15.

4. Physiognomic attribution:

In Islamic legal terminology, a qa'if is a person who identifies lineage by examining the physical features of a newborn and using intuition²⁶.

Those who accept physiognomic attribution as a means of establishing lineage believe that it is only used in the absence of marital evidence when the newborn's lineage is uncertain and disputed. The child is presented to experts in physiognomic attribution, who then attribute the child to whichever of the disputing parties they identify.

Scholars have differed in their views on the legitimacy of establishing lineage through this method, adopting two well-known positions.

The first position: It is impermissible to issue a ruling based on physiognomic attribution for establishing lineage. This is the position of the Hanafi school²⁷.

The second position is that: Rulings based on qiyāfah may be adopted to establish lineage in cases of uncertainty and dispute. This is the position adopted by the majority of scholars, including the Malikis, Shafi'is, Hanbalis and Zahiris²⁸. This position is supported by evidence from the Prophetic Sunnah and the established practice of several of the Companions, may Allah be pleased with them. No opposing views are known to have been expressed by them. Their practice therefore amounted to a consensus in favour of applying this method²⁹.

5. Drawing lots:

This is the weakest method of establishing lineage under Islamic law. Therefore, the majority of scholars have not adopted it. Those who have accepted it and considered it a method of establishing lineage include the Zahiris; the Malikis, in the case of children born to female slaves; the Shafi'is, when two pieces of evidence conflict; and Imam Ahmad, according to one narration attributed to him³⁰.

According to those who accept the practice of drawing lots, a ruling based on it may only be made when the other methods of establishing lineage — namely, the marital bed, evidence or physiognomic attribution — cannot be applied; when two pieces of evidence are equal in strength; or when the experts' opinions on physiognomic attribution conflict. In such cases, drawing lots is used to preserve lineage and put an end to disputes and conflicts. Therefore, a ruling based on this method is the best that can be done and preferable

²⁶- Definitions : Ali ibn Muhammad ibn Ali al-Jurjani, Tunisian Publishing House, 1971, p. 91.

²⁷- The Expounded Book : Shams al-Din Abu Bakr Muhammad ibn Ahmad al-Sarakhsi, Dar al-Ma'rifah for Printing and Publishing, Beirut, 2nd ed., Vol. 17, p. 70.

²⁸- Al-Zurqani's Commentary on Khalil, Vol. 6, p. 110; The Refined Book by al-Shirazi, Vol. 1, p. 444; The Sufficient Book on the Jurisprudence of Imam Ahmad ibn Hanbal (Al-Kafi): Abdullah ibn Ahmad ibn Qudamah al-Maqdisi, Islamic Office, Beirut, 2nd ed., 1399 AH/1979, Vol. 5, p. 368; The Adorned Book (Al-Muhalla): Abu Muhammad Ali ibn Ahmad ibn Hazm, Dar al-Fikr, Beirut, Vol. 9, p. 435.

²⁹- Judicial Methods in Islamic Governance : Ibn Qayyim al-Jawziyyah, Al-Madani Press, Cairo, edited by Dr. Muhammad Jamil Ghazi, p. 195.

³⁰- The Adorned Book by Ibn Hazm, Vol. 10, p. 51; Al-Zurqani's Commentary on Khalil, Vol. 5, p. 109; The Refined Book by al-Shirazi, Vol. 1, p. 445; The Book of Sufficiency by Ibn Qudamah, Vol. 6, p. 344.

to allowing the child's lineage to be lost, given the many harmful consequences that would result from such a loss.

The second requirement: Adoption of DNA fingerprinting in establishing lineage and its fields of application

First branch: The permissibility of using DNA fingerprinting

Using DNA fingerprinting to establish lineage where it can be legally established on the basis of experts' opinions on physiognomy is evidently valid and permissible. This is because if it is permissible to establish lineage based on the opinion of such experts, who rely on apparent or hidden signs, intuition, knowledge and experience to identify similarities between parents and children, then relying on the results of DNA fingerprinting tests and establishing lineage based on the opinions of DNA fingerprinting experts is, at the very least, equivalent to relying on the opinion of experts in physiognomic attribution. DNA fingerprinting may even deserve greater consideration, and rulings based on its results may be justified by a fortiori analogy.

This is because DNA fingerprinting relies on hidden, tangible evidence obtained through laboratory tests whose validity in indicating the existence or absence of a lineage relationship between two individuals has been established through scientific experiments. As one medical specialist stated, everything that experts in physiognomic attribution can do can be achieved by DNA fingerprinting with the utmost precision³¹.

Some jurists have explicitly given precedence to the opinion of an expert in physiognomic attribution whose judgment is based on subtle similarities over that of an expert whose judgment is based on apparent similarities. They justified this by stating that the person whose judgment relies on subtle similarities possesses additional knowledge, indicating his skill and insight³².

Undoubtedly, DNA fingerprinting provides additional knowledge and expertise, as well as the ability to discover genetic markers indicating lineage relationships, which is unmatched by physiognomy. Nevertheless, 'analogy and the principles of Islamic law support physiognomic attribution because accepting it constitutes a judgement based on the perception of subtle and apparent matters that bring reassurance to the mind'. Therefore, it must be recognised, just as the assessment of an appraiser and the evaluation of an evaluator are recognised³³. This is because the opinion of an expert in physiognomy "constitutes a judgement based on preponderant probability and predominant opinion held by someone with relevant expertise; it is therefore permissible, just like the opinions of appraisers"³⁴.

The same applies to DNA fingerprinting, given the additional knowledge and sensory evidence it provides concerning the existence of similarities and lineage relationships. Therefore, this supports the ruling that

³¹- Some Jurisprudential Theories on Genetic Fingerprinting, by Dr. Muhammad Bakhshmah, research paper submitted to the Islamic Fiqh Council of the Muslim World League at its fifteenth session, 1419 AH, p. 26; Genetic Fingerprinting and Its Role in Establishing Lineage, by Dr. Hasan al-Shadhili, in the proceedings of the Symposium on Heredity and Genetic Engineering, Vol. 1, p. 494.

³²- See: The Sufficient Guide for Understanding the Meanings of the Words of al-Minhaj by al-Shirbini, Vol. 4, p. 491.

³³- Judicial Methods in Islamic Governance by Ibn al-Qayyim, p. 198.

³⁴- The Book of Sufficiency by Ibn Qudamah, Vol. 5, p. 768.

permits its use to establish lineage in cases where a ruling may be based on the opinion of experts in physiognomic attribution by analogy with that method.

Furthermore, the basic principle governing matters other than acts of worship is permissibility and authorisation. This is also supported by general legal evidence and the comprehensive principles of Islamic law concerning the realisation of benefits and the prevention of harm. Using DNA fingerprinting to establish lineage clearly achieves benefits and prevents harm.

The Symposium on Genetics and Genetic Engineering made the following recommendation: 'From a practical perspective, DNA fingerprinting is an almost infallible method of verifying biological parentage and identifying individuals, particularly in the field of forensic medicine.' It provides strong circumstantial evidence, which is generally accepted by jurists in cases other than those involving the legally prescribed hudud punishments. It also represents a significant modern advancement in physiognomic attribution, a method that is widely accepted by jurists for establishing disputed lineage. Therefore, the symposium recommends that DNA fingerprinting be adopted in all cases in which physiognomic attribution is accepted, with even greater reason"³⁵.

Second Branch: Fields and Conditions for Establishing Lineage through DNA Fingerprinting

DNA fingerprinting may be used to establish lineage in the following cases:³⁶

1. Cases involving disputes over a person of unknown lineage in various forms mentioned by jurists, arising from an absence of evidence, equal strength of evidence or participation in sexual intercourse under a mistaken belief (waṭ' bi-shubha), and similar circumstances³⁷.
2. Cases involving the suspected mix-up of newborns in hospitals, maternity and childcare centres, and similar facilities, as well as cases involving in vitro fertilisation.
3. Cases involving lost children, children mixed up as a result of accidents or disasters when identifying their families is impossible, and cases involving bodies whose identities cannot be established due to wars or other circumstances.

To ensure the accuracy of DNA fingerprinting results, jurists and medical specialists in this field have identified conditions that must be met before the results can be relied upon. These conditions relate to DNA

³⁵- Summary of the Proceedings of the Discussion Session on the Evidentiary Value of Genetic Fingerprinting in Establishing Lineage, p. 46.

³⁶- See: Discussions of the Islamic Fiqh Council of the Muslim World League at its fifteenth session, p. 21; Summary of the Proceedings of the Discussion Session on Genetic Fingerprinting in Kuwait, p. 47; and Genetic Fingerprinting and Its Effects on Establishing Lineage, by Dr. Hasan al-Shadhili, in the proceedings of the Symposium on Heredity and Genetic Engineering, Vol. 1, p. 498.

³⁷- The Shafi'i and Hanbali jurists mentioned numerous cases involving both types. See: The Sufficient Guide for Understanding the Meanings of the Words of al-Minhaj, Vol. 4, pp. 489–490; The Book of Sufficiency, Vol. 5, p. 771; and The Book of Equity, Vol. 6, p. 456.

fingerprinting experts, the methods they use to conduct analyses, and the laboratories and facilities specialising in DNA fingerprinting. The most important of these conditions are as follows:³⁸

1. DNA fingerprinting laboratories must be affiliated with or directly supervised by the state, while complying with all scientifically and technically recognised local and international standards applicable in this field.
2. All personnel working in DNA fingerprinting laboratories, including DNA fingerprinting experts and laboratory assistants, must have the qualifications required for their testimony to be accepted, as is the case with physiognomy experts. They must also have the knowledge and experience required in their specific field of laboratory specialisation.
3. Every stage of DNA fingerprinting analysis must be documented from sample transfer until results are obtained to ensure sample integrity and result accuracy. These records must be preserved for future reference.
4. DNA fingerprinting analyses must be conducted using multiple methods and a greater number of amino acids to ensure the results are as accurate as possible.

If these conditions and requirements are met by DNA fingerprinting experts and the facilities and laboratories conducting analyses, there is no reason to hesitate regarding the permissibility of using DNA fingerprinting as a legally recognised method of establishing lineage.

The third requirement: The status of DNA fingerprinting among evidentiary means

Jurists have agreed that the marital bed, evidence (bayyinah) and acknowledgement (iqrar) are means of establishing lineage. However, as previously mentioned, physiognomic attribution (qiyāfah) is a matter of dispute. Today, a new form of evidence has emerged: DNA fingerprinting. What, then, is its status among the evidentiary means?

Contemporary jurists have adopted two positions on the status of DNA fingerprinting in comparison with other methods of establishing lineage.

First Branch: Giving precedence to DNA fingerprinting over other legal methods

Dr Muhammad Othman Raafat and Abd al-Muati al-Bayoumi adopted this position because DNA fingerprinting achieves the same as other forms of evidence and more. They supported their position with the following evidence:

1. **From the Qur'an:** The Almighty's saying: 'Call them by the names of their fathers; that is more just in the sight of Allah' (Surah al-Ahzab, verse 5).

³⁸- See: Summary of the Proceedings of the Discussion Session on Genetic Fingerprinting, p. 48; discussions of the Islamic Fiqh Council of the Muslim World League at its fifteenth session, p. 21; and Genetic Fingerprinting and Its Effect on Lineage, in Terms of Establishing or Negating It, by Dr. Najm Abd al-Wahid, p. 16.

This verse explicitly calls for a person to be attributed to their biological father. This therefore requires us to identify the biological father and make every effort to do so³⁹.

2. From Rational Considerations:

A. The evidence for lineage cited by jurists does not, in reality, fall outside the general framework of legal evidence because its purpose is to reveal the truth. None of these forms of evidence involves a prescribed act of worship in terms of its quantity or form, except for the stipulations regarding the punishments for adultery and the false accusation of adultery.

B. The methods of proof applied by jurists for a long time — to the extent that some considered them fixed principles and rules — are, in reality, no more than the application of what was possible and observable, and the interpretation of texts using the tools available in their era. It was not possible to issue rulings beyond that. This argument aims to show that fatwas change with time and circumstances, and that a mufti issues fatwas according to the customs of his contemporaries. The era of earlier scholars is not the same as that of later scholars⁴⁰.

Objection to this position: Some argue that prioritising scientific evidence over Islamic law would ultimately lead to rejecting the Book of Allah and disregarding the Sunnah of the Prophet (peace and blessings be upon him). This position suggests that Allah Almighty has bestowed signs upon humanity for their benefit and to help them recognise the truth, not to disregard Islamic legal texts⁴¹.

This position concludes that the lineage deemed authoritative is biological rather than legal.

Second branch: DNA fingerprinting is subject to the same ruling as physiognomic attribution

The majority of contemporary jurists, including Sheikh Farid Wasel, Dr Wahbah al-Zuhayli, Muhammad Sulayman al-Ashqar, Professor Khalifa Ali al-Kaabi and Ali Muhyiddin al-Qaradaghi, hold the view that DNA fingerprinting does not take precedence over legally recognised methods of establishing lineage, even when there is conflict, because the latter carry greater weight under Islamic law. However, DNA fingerprinting must take precedence over physiognomic attribution because it is more precise. Physiognomic attribution is an ancient, primitive method that relies on identifying similarities by comparing physical features, such as the colour and shape of the feet, hands or eyes. In contrast, DNA fingerprinting relies on technical expertise, laboratory analysis and advanced technology⁴².

Third branch: Cases in Which Lineage Cannot Be Established Through DNA Fingerprinting

³⁹- See: Genetic Fingerprinting and Its Fields of Application, by Professor Saad al-Din Hilali, Vol. 3, p. 276.

⁴⁰- Same reference, Vol. 3, p. 267.

⁴¹- Genetic Fingerprinting and Its Impact on Jurisprudential Rulings, Khalifa Ali al-Kaabi, p. 212.

⁴²- Genetic Fingerprinting and the Extent of Its Legitimacy in Establishing Lineage and in Criminal Cases, Omar ibn Muhammad al-Sabil, p. 70; Genetic Fingerprinting and Its Impact on Jurisprudential Rulings, Khalifa Ali al-Kaabi, p. 212; and Genetic Fingerprinting and Its Fields of Application, Sheikh Farid Wasil, p. 56.

Some jurists have identified cases in which physiognomic attribution cannot be used to establish lineage. Consequently, DNA fingerprinting cannot be used to establish lineage in these cases either. These cases include the following:

First, if a man acknowledges the lineage of a person whose lineage is unknown, and if the conditions for lineage acknowledgement are met, then that person is attributed to him. This is based on the consensus that, when possible, lineage is established through acknowledgement of paternity. In such cases, the person cannot be referred to experts in physiognomic attribution because there is no opposing claimant. The same ruling applies to DNA fingerprinting as to physiognomic attribution in this case⁴³.

Secondly, the acknowledgement by some siblings that another person is their sibling does not constitute evidence against the other siblings, nor does it establish lineage with respect to them. Its effects are limited to the siblings who have acknowledged the relationship, specifically with regard to their respective shares of the inheritance. DNA fingerprinting is not taken into consideration in this case because physiognomic attribution plays no part in it⁴⁴.

Thirdly, if a person of unknown lineage is attributed to one of two claimants based on the opinion of experts in physiognomic attribution and the other claimant subsequently presents evidence that the person is their child, the ruling will be made in their favour and the experts' opinion will be disregarded. This is because formal evidence takes precedence over such an opinion, just as tayammum (dry ablution) is no longer applicable when water is available. The same ruling applies to DNA fingerprinting in this case.

The Third Section: The Ruling on the Use of DNA Fingerprinting in Denying Lineage

The First Requirement: Methods of Denying Lineage in Islamic Jurisprudence

One of the greatest merits of Islamic law is its preservation of lineage. This is demonstrated by its concern for establishing and maintaining lineage, facilitating its establishment through the slightest and easiest means, and being strict in denying and invalidating it once it has been established through one of the legally recognised methods. Once lineage has been established, Islamic law does not accept its denial, regardless of the motive or reason prompting such denial, except through one method: li'an (the procedure of mutual imprecation between spouses).

The first branch: The Concept of Li'an and Evidence of Its Legitimacy

1. Linguistically, li'an is derived from the word la'n, meaning expulsion and removal from goodness. It is called this because, in the fifth testimony, the husband invokes a curse upon himself, or because either spouse is liable to be expelled and distanced from Allah's mercy due to lying and false accusations⁴⁵.

⁴³- See: Summary of the Discussion Session on the Evidentiary Value of Genetic Fingerprinting, p. 47; and Genetic Fingerprinting and Its Role in Establishing Lineage, in the proceedings of the Symposium on Heredity and Genetic Engineering, Vol. 1, p. 497.

⁴⁴- Summary of the Proceedings of the Discussion Session on the Evidentiary Value of Genetic Fingerprinting, p. 47.

⁴⁵- See: Lisan al-Arab, Vol. 13, p. 387.

In Islamic law, li'ān consists of emphatic testimonies accompanied by oaths made by the two spouses, together with a curse or wrath⁴⁶.

2. Evidence of its legitimacy:

The legitimacy of li'an is established by the Qur'an and the Sunnah.

As for the Qur'an, Allah Almighty says:

'Those who accuse their wives of adultery and have no witnesses except themselves must swear by Allah four times that they are telling the truth. The fifth is that the curse of Allah be upon him if he is a liar.' This shall avert the punishment from her if she bears witness four times, swearing by Allah, that he is indeed a liar. The fifth testimony is that the wrath of Allah be upon her if he is telling the truth.' (Surah An-Nur, verses 6–9).

As for the Sunnah, Ibn 'Umar — may Allah be pleased with them both — reported: 'A man invoked li'an against his wife and disavowed the child she had borne.' The Messenger of Allah separated them and attributed the child to the woman⁴⁷.

Li'ān is only prescribed when a husband becomes aware of his wife's adultery, whether through seeing it himself, receiving information from a trustworthy person, seeing an immoral man entering or leaving her home, widespread reports of her adultery, or similar circumstances. If a child's lineage needs to be denied, whether the child is still in the womb or has already been born, the husband cannot deny the child's lineage if the child was born within the marital union, except by invoking li'an against his wife⁴⁸.

Li'an is valid only if the following conditions are met:⁴⁹

Both spouses must be legally competent.

The husband must undertake li'ān voluntarily and must not be compelled to do so.

The husband must accuse his wife of adultery and she must deny the accusation.

Li'an must take place by order of the ruler or his deputy.

The second branch: The Procedure of Li'ān and Its Effects

⁴⁶- See: The Excellent Principles in the Arrangement of Legal Rules by al-Kasani, Vol. 3, p. 241; and The Revealing of the Veil by al-Buhuti, Vol. 5, p. 390.

⁴⁷- Reported by al-Bukhari in his Authentic Collection (Sahih al-Bukhari), Book of Divorce, Chapter: "The Child Is Attributed to the Woman Who Has Engaged in Mutual Invocation of a Curse (Li'an)," Hadith No. 5009 according to al-Bugha's numbering, Vol. 5, p. 2036.

⁴⁸- See: The Refined Book by al-Shirazi, Vol. 2, p. 119; The Book of Sufficiency by Ibn Qudamah, Vol. 7, pp. 416, 420.

⁴⁹- See: The Excellent Principles in the Arrangement of Legal Rules by al-Kasani, Vol. 3, p. 237; Al-Kharashi's Commentary on Khalil, Vol. 4, p. 124; The Refined Book by al-Shirazi, Vol. 2, p. 125; and The Book of Sufficiency by Ibn Qudamah, Vol. 7, p. 416.

The li‘ān procedure involves the ruler or their deputy instructing the husband to invoke li‘ān against his wife. The husband then says, “I swear by Allah that my wife has committed adultery,” naming or pointing to her. He repeats this statement four times. On the fifth occasion, he says, ‘May Allah’s curse be upon me if I am lying.’ If he wishes to deny the child’s lineage, he says, ‘This child was conceived through adultery and is not mine.’

Once the husband has completed his li‘ān, the wife performs li‘ān by saying: ‘I swear by Allah that he is indeed lying about the adultery he has accused me of.’ She repeats this statement four times, then on the fifth occasion says: ‘May the wrath of Allah be upon her if he is telling the truth.’

Once li‘ān has been completed in the manner prescribed by Islamic law, the following legal consequences arise:⁵⁰

1. The child’s lineage is disassociated from the husband if he explicitly denies it; the child’s lineage is then attributed to the mother, in accordance with the aforementioned hadith.
2. The prescribed punishment for a false accusation is waived for the husband if his wife is chaste; the discretionary punishment is waived if she is not. The prescribed punishment for adultery is also waived for the woman, as stated explicitly in the Qur’an.
3. Permanent separation occurs between the spouses and marriage to her becomes permanently prohibited for him based on the saying of the Prophet (peace and blessings be upon him): ‘You have no right to her’⁵¹.

The second requirement: The extent to which DNA fingerprinting affects lineage denial.

The first branch: The ruling on relying exclusively on DNA fingerprinting instead of li‘ān to deny lineage.

One aspect of the strictness of Islamic law regarding the denial of lineage after it has been established is that it restricts denial to one method: li‘ān. Numerous conditions must be met for li‘ān to be performed, which limits its occurrence and reduces its frequency. Accordingly, DNA fingerprinting may not be used to deny established lineage, nor may it be relied upon exclusively instead of li‘ān on the basis of its results indicating an absence of biological relationship between husband and child born within marriage.

This is because li‘ān is a legal ruling established by the Qur’an, the Sunnah and consensus, and performing it has a devotional character. Therefore, it cannot be abolished, replaced by another method or compared to any other means, regardless of the degree of accuracy and reliability attributed to such means by specialists.

While some contemporary jurists have argued that DNA fingerprinting can be used instead of li‘ān when its results indicate an absence of biological relationship between husband and child, they justify this by claiming that husbands resort to li‘ān to deny lineage when they lack witnesses to support their accusations against

⁵⁰- See: The Sufficient Guide for Understanding the Meanings of the Words of al-Minhaj by al-Shirbini, Vol. 4, p. 374; and The Revealing of the Veil by al-Buhuti, Vol. 5, p. 394.

⁵¹- Reported by al-Bukhari in his Authentic Collection (Sahih al-Bukhari), Book of Divorce, Chapter: “The Consolatory Gift for a Woman for Whom No Dowry Has Been Specified,” Hadith No. 5035, Vol. 5, p. 2046.

their wives. Since DNA fingerprinting may indicate that the husband's statement is true, it may serve as an equivalent substitute for witnesses demonstrating the truthfulness of the husband's claim against his wife where the results of DNA fingerprinting establish the absence of a biological relationship between the husband and the child born within the marital bed⁵².

This view has been refuted on the grounds that it involves a contradiction of Islamic legal texts, a willingness to invalidate them, and the abandonment of their application, which warrants rejecting this view and disregarding it⁵³. This is because established Islamic legal rulings can only be annulled or rendered inapplicable by a legal text indicating their abrogation, which is impossible. Furthermore, even if the wife acknowledges the truth of her husband's accusation of adultery, the child's lineage is still attributed to the husband based on the saying of the Prophet (peace and blessings be upon him): 'The child belongs to the marital bed, and the adulterer is deprived of any claim'.

The child's lineage may only be denied through li'ān.

Moreover, li'ān is prescribed to avert the prescribed punishment. A husband may know that the pregnancy is his, yet his wife may have committed adultery after becoming pregnant, in which case he may wish to avert the prescribed punishment through li'ān. Therefore, he cannot be deprived of this right established for him under Islamic law. How, then, can an Islamic legal ruling be annulled on the basis of uncertain medical theories?

The draft recommendation of the Islamic Fiqh Council of the Muslim World League, adopted during its fifth session, stated: 'It is not permissible to use DNA fingerprinting independently to deny lineage in place of li'ān, nor may it be used to deny the lineage of a person whose lineage has been established by any legally recognised evidence'⁵⁴.

Sheikh Muhammad Al-Ashqar stated: 'It is not acceptable under Islamic law to use genetic engineering and DNA fingerprinting to invalidate paternity that has been established through a valid method recognised by Islamic law, as explained above.' However, DNA fingerprinting can be used to establish or deny paternity that has not been established through a valid method recognised by Islamic law."⁵⁵.

Although it is not permissible to rely exclusively on DNA fingerprinting instead of li'ān, it is advisable to use it as circumstantial evidence that may persuade the husband to withdraw his request for li'ān, provided that the DNA fingerprinting results prove that the child born within the marital union is his son and was conceived using his sperm. This serves a legitimate interest recognised and encouraged by Islamic law, as it confirms

⁵²- See: The paper by Sheikh Muhammad Mukhtar al-Salami in the proceedings of the Symposium on Heredity and Genetic Engineering, Vol. 1, p. 405.

⁵³- See: Genetic Fingerprinting and the Extent of Its Legitimacy in Establishing Lineage and in Criminal Cases, Omar ibn Muhammad al-Sabil, previously cited reference, p. 57.

⁵⁴- Discussions during the session of the Islamic Fiqh Council on genetic fingerprinting at its fifteenth session, p. 21.

⁵⁵- Establishing Lineage through Genetic Fingerprinting, in the proceedings of the Symposium on Heredity and Genetic Engineering, Vol. 1, p. 454.

the legal principle that 'the child belongs to the marital bed', preserves the marital relationship and prevents the harm and detrimental consequences of li'an.

However, if the husband insists on requesting li'an in order to disavow the child's lineage, this is his right and he cannot be deprived of it on the basis of DNA fingerprinting results indicating that the child whose lineage he seeks to deny is his son.

Conversely, if the results of a DNA test prove that the child born within the marital bed is not the husband's son, this constitutes circumstantial evidence that strengthens his position and confirms his right to invoke li'an.

The second branch: The Ruling on Using DNA Fingerprinting to Verify Established Lineage

As we have previously explained, lineage is established through one of the methods recognised by Islamic law. Accordingly, it can only be denied through li'an. The principles of Islamic law also indicate that it is impermissible to attempt to verify the validity of established lineage. This is because divinely revealed laws aim to preserve the necessities of human life, including lineage and honour, and because Islamic law seeks to promote benefits and prevent harm.

As attempting to verify established lineage can cast doubt on people's honour and lineage, leading to various forms of psychological and social harm, including disrupting marital relationships and undermining family structures, as well as sowing hostility among relatives and kin, it is impermissible to verify lineage validity through DNA fingerprinting or any other means.

Furthermore, if DNA fingerprinting is performed to verify the lineage of a particular individual and the results contradict the lineage established under Islamic law, those results must be disregarded and may not form the basis of any legal ruling. This is because, once lineage has been legally established in accordance with Islamic law, it can only be annulled or invalidated through one method: li'an, as explained above.

Evidence for this comes from the report narrated by Abu Hurayrah, may Allah be pleased with him, who said: 'A man from Banu Fazarah came to the Messenger of Allah (peace and blessings be upon him) and said, "My wife has given birth to a dark-skinned boy," thereby implying that he wished to disavow the child.' The Prophet asked him, 'Do you have camels?'

He replied, 'Yes.' The Prophet asked, 'What colours are they?' He replied, 'Red.' The Prophet asked, 'Are there any greyish ones among them?' The man replied, 'There are indeed some greyish ones.' The Prophet then asked, 'How did that happen?' The man replied, "Perhaps it is due to an inherited trait." The Prophet did not grant him permission to disavow the child⁵⁶.

This Hadith suggests that, once established, lineage cannot be denied, regardless of any signs or indications to the contrary. In this case, the Prophet (peace and blessings be upon him) did not consider physical

⁵⁶- Reported by al-Bukhari in his Authentic Collection (Sahih al-Bukhari), Book of Holding Fast to the Qur'an and the Sunnah, Chapter: "One Who Compares an Established Principle with a Clarified Principle," Hadith No. 6884, Vol. 6, p. 2667.

resemblance because the marital bed was a stronger piece of evidence, as detailed in the hadith of Ibn Umm Zam‘ah.

Therefore, if lineage cannot be denied after it has been established except through li‘ān, it is likewise impermissible to use any means that may suggest the absence of lineage and deny it in relation to the person concerned. This is because means are subject to the same ruling as their ends; anything that serves as a means to an unlawful end is subject to the same ruling as that end.

Conclusion:

After examining the subject of this research paper concerning the extent to which DNA fingerprinting may be used to establish or deny lineage, the most important findings and recommendations can be summarised as follows:

1. Lineage is established through the marital bed, acknowledgement of paternity and evidence, all of which are agreed upon by scholars. As for qiyāfah (determining lineage through physical resemblance), this was accepted by most scholars, except the Hanafis. Drawing lots was accepted by the Zahirites and the Maliki school of thought in the case of children born to enslaved women, by the Shafi‘i school of thought when two sets of evidence conflicted, and by Imam Ahmad according to one of the two narrations attributed to him.
2. DNA fingerprinting provides conclusive circumstantial evidence for verifying biological parentage and establishing identity, particularly in the field of forensic medicine, and is almost never mistaken.
3. DNA fingerprinting can be used to determine lineage in cases where establishing lineage through a legal judgement is permitted. As it is permissible to establish lineage based on the assessment of a qa‘if (a person who determines lineage through physical resemblance), whose evaluation is based on apparent or hidden signs, as well as insight, knowledge and experience in recognising resemblance between fathers and children, relying on DNA fingerprinting test results and establishing lineage based on the statements of DNA fingerprinting experts is, at the very least, equivalent to relying on the assessment of a qā‘if, if not more deserving of acceptance.
4. DNA fingerprinting can be used in uncertain cases, such as when newborns are possibly mixed up in hospitals, clinics, maternity centres and childcare centres, or when there is uncertainty arising from intercourse under a mistaken belief of lawfulness, disputes over the lineage of a person of unknown parentage, or difficult cases involving the identification of the families of lost children.
5. Islamic law does not permit the denial of established lineage, regardless of motive or reason, except through li‘ān. Accordingly, DNA fingerprinting may not be used to deny lineage independently, as a substitute for li‘ān, nor to deny the lineage of a person whose lineage has been established through any legally recognised evidence.

Recommendations:

To preserve lineage and protect honour, family laws governing the establishment or denial of lineage should specify various cases in detail to prevent violations of its sanctity. This should be overseen by a non-profit

government body comprising specialists in Islamic law, medicine and administration, who will handle matters with the utmost care and confidentiality.

List of sources and references

First: The Holy Qur'an

According to the narration of Hafsa from Asim.

Second: Books on Qur'anic Sciences and Hadith Collections

1. The Comprehensive Book of the Rulings of the Qur'an by Abu Abdullah Muhammad ibn Ahmad al-Qurtubi. Published by Dar Alam al-Kutub in Riyadh, Kingdom of Saudi Arabia, in 1423 AH/2003 AD. Edited by Hisham Samir al-Bukhari.
2. The Concise Authentic Collection, also known as Sahih al-Bukhari, by Muhammad ibn Isma'il al-Bukhari, published by Dar Ibn Kathir in al-Yamamah, Beirut, third edition, 1407 AH/1987 AD, edited by Dr Mustafa Dib al-Bugha.

Second: Linguistic Books

3. Definitions, by Ali ibn Muhammad ibn Ali al-Jurjani, Tunisian Publishing House, 1971.
4. The Arabic Language by Muhammad ibn Abdallah ibn Mukarram ibn Manzur, Beirut: Dar Sadir.
5. The Intermediate Dictionary, edited by Ibrahim Anis and published by the Department of Islamic Heritage Revival, Qatar National Printing Presses, 1985.

Third: Books on Islamic Jurisprudence

6. Fairness in Identifying the Preponderant Opinion amid Juristic Disagreement according to the School of Imam Ahmad ibn Hanbal. Ali ibn Sulayman al-Mardawi. Muhammadan Sunnah Press, Cairo, 1st edition, 1376 AH/1957 AD. Edited by Muhammad Hamid al-Fiqi.
7. The Excellent Works in the Arrangement of the Laws. Ala al-Din Abu Bakr ibn Masud al-Kasani. Dar al-Kitab al-Arabi, Beirut, 2nd edition, 1402 AH/1982 AD.
8. Al-Bukhari's Marginal Commentary on al-Mardini's Explanation of al-Rahbiyyah. Muhammad ibn Umar al-Buqari al-Shafi'i. Dar al-Qalam, Damascus, 3rd edition, 1406 AH/1986 AD.
9. Provisions for the Hereafter from the Guidance of the Best of Servants. Muhammad ibn Abi Bakr ibn Qayyim al-Jawziyyah. Al-Risalah Foundation, 3rd edition, 1405 AH/1985 AD. Edited by Shu'ayb al-Arna'ut and 'Abd al-Qadir al-Arna'ut.
10. Al-Zurqani's Commentary on Khalil's Abridgment. 'Abd al-Baqi al-Zurqani. Dar al-Fikr, Beirut, 1398 AH/1978 AD.

11. Al-Kharashi's Commentary on Khalil's Abridgment. Abu 'Abd Allah Muhammad al-Kharashi. Dar Sadir, Beirut.
12. Judicial Methods in Islamic Governance. Al-Madani Press, Cairo. Edited by Dr. Muhammad Jamil Ghazi.
13. The Sufficient Guide to the Jurisprudence of Imam Ahmad ibn Hanbal. 'Abd Allah ibn Ahmad ibn Qudamah al-Maqdisi. The Islamic Office, Beirut, 2nd edition, 1399 AH/1979 AD.
14. The Revealer of the Veil from the Text of al-Iqna'. Mansur ibn Yunus al-Buhuti. Ansar al-Sunnah al-Muhammadiyah Press, Egypt, 1366 AH/1947 AD.
15. The Enriching Guide. 'Abd Allah ibn Ahmad ibn Qudamah al-Maqdisi. Riyadh Modern Library, Riyadh.
16. The Enricher of the Needy in Understanding the Meanings of the Words of al-Minhaj, by Muhammad al-Shirbini al-Khatib. Muhammad al-Shirbini al-Khatib. Dar Ihya al-Turath al-Arabi, Beirut.
17. The Refined Book on the Jurisprudence of Imam al-Shafi'i. Ibrahim ibn Ali al-Shirazi. Dar al-Ma'rifah for Printing and Publishing, Beirut. Reprinted from the second edition, 1379 AH/1959 AD.
18. The Concise Guide, Together with the Extensive Commentary and Fairness. Muwaffaq al-Din ibn Qudamah, 'Abd al-Rahman ibn Qudamah and 'Ali ibn Sulayman al-Mardawi. Dar Hajr for Printing, Publishing and Distribution, 1st edition, 1414 AH/1993 CE. Edited by Dr 'Abd Allah al-Turki and Dr 'Abd al-Fattah al-Hilu.
19. The Expounded Book. Shams al-Din Abu Bakr Muhammad ibn Ahmad al-Sarakhsi. Dar al-Ma'rifah for Printing and Publishing, Beirut, 2nd edition.
20. The Adorned Book. Abu Muhammad 'Ali ibn Ahmad ibn Hazm. Dar al-Fikr, Beirut.
21. General Introduction to Islamic Jurisprudence, by Mustafa Ahmad al-Zarqa. Mustafa Ahmad al-Zarqa. Dar al-Qalam, Damascus, 1st edition, 1418 AH/1998 AD.
22. The Guidance: A commentary on the beginning of guidance for the beginner. Burhan al-Din ibn Ali ibn Abi Bakr al-Marghinani. Published by the Mustafa al-Babi al-Halabi Library and Press in Egypt.

Fourth: Contemporary Studies in Islamic Jurisprudence.

23. Genetic Fingerprinting and Its Role in Criminal Evidence: An Islamic Perspective' by 'Arif 'Ali 'Arif. 'Arif 'Ali 'Arif. Dar al-Tajdid for Printing, Publishing and Translation, Malaysia, 1st edition, 1422 AH/2002 AD.
24. Cloning Between Science and Religion. Dr Abd al-Hadi Misbah. Egyptian Lebanese Publishing House, Beirut, 2nd edition, 1419 AH/1999 CE.
25. DNA Fingerprinting and Its Impact on Jurisprudential Rulings Professor Khalifa 'Ali al-Ka'bi Professor Khalifa 'Ali al-Ka'bi. Published master's thesis. Dar al-Jami'ah al-Jadidah for Publishing, Alexandria, Egypt, 2004.

26. Establishment of Lineage. Yasin ibn Nasir al-Khatib. Dar al-Bayan al-Arabi, Jeddah, 1st edition, 1407 AH/1987 CE.

Fifth: Journals and websites:

27. 'Establishing Lineage Through DNA Fingerprinting', included in Proceedings of the Symposium on Genetics, Genetic Engineering, the Human Genome and Gene Therapy: An Islamic Perspective', edited by Dr Muhammad al-Ashqar and Sheikh Muhammad Mukhtar al-Salami. Published by the Islamic Organisation for Medical Sciences, Kuwait, 1421 AH/2000 AD.

28. 'Forensic Biology and DNA Fingerprinting', by Ahmad Muhammad Khalil, in the Ajman Journal of Science and Technology, Issue 1, Ajman University, 1421 AH/2001 AD.

29. 'DNA fingerprinting and its evidentiary value', Professor Abd al-Rashid Muhammad Amin Qasim, Al-Adl Journal, Saudi Ministry of Justice, Issue 23, Rajab 1425 AH.

30. 'The Evidentiary Value of Circumstantial Evidence in Islamic Jurisprudence', Muhammad Ahmad Hasan Qudah, Journal of Studies, Deanship of Research, Jordan, Vol. 30, No. 2, November 2003.

31. 'Discussion Session on Genetic Engineering, the Human Genome, and Gene Therapy', Islamic Organization for Medical Sciences website: [<https://theislamicmedicine.org/>] (https://theislamicmedicine.org/?utm_source=chatgpt.com).

32. 'Summary of the Proceedings of the Discussion Session on the Evidentiary Value of DNA Fingerprinting in Establishing Lineage', Islamic Organization for Medical Sciences, Kuwait, 2000 AD.

33. Journal of the Islamic Fiqh Academy:

34. 'DNA Fingerprinting and Its Areas of Application', by Sheikh Farid Wasil, Issue 17, Year 15, 1425 AH/2003 AD.

35. 'The Sixteenth Session: Report of the Scientific Committee on DNA Fingerprinting', Issue 16, Year 14, 1424 AH/2003 AD.

36. 'DNA Fingerprinting and the Extent of Its Legitimacy in Matters of Lineage and Criminal Offences', Umar ibn Muhammad al-Sabil, Journal of the Islamic Fiqh Academy, Issue 15, Year 14, 1424 AH/2003 AD.

37. 'DNA Fingerprinting and its Areas of Application', Saad al-Din Hilali, Proceedings and Research Papers of the Sixteenth Session of the Islamic Fiqh Academy in Makkah al-Mukarramah, 1422 AH/2002 CE.

38. 'Discussions of the Session of the Islamic Fiqh Academy of the Muslim World League on DNA Fingerprinting during its Fifteenth Session', held in Rajab 1419 AH.

39. 'DNA Fingerprinting from the Perspective of Islamic Jurisprudence', Professor Ali Muhyi al-Din Qara Daghi, Journal of the Islamic Fiqh Academy, Issue 16, Year 14, 1424 AH/2003 AD.

40. 'DNA Fingerprinting and its Areas of Application', Dr Wahba al-Zuhayli, Proceedings and Research Papers of the Sixteenth Session of the Islamic Fiqh Academy in Makkah al-Mukarramah, 1422 AH/2002 AD.
41. 'DNA fingerprinting and its impact on lineage, in terms of establishment and denial', Dr Najm Abdullah Abd al-Wahid, research paper submitted to the Islamic Fiqh Academy of the Muslim World League at its fifteenth session in 1419 AH.
42. 'Some Jurisprudential Theories on DNA Fingerprinting', Dr Muhammad Bakhusmah, research paper submitted to the Islamic Fiqh Academy of the Muslim World League at its fifteenth session in 1419 AH.
43. 'Genetic Fingerprinting and Its Role in Establishing Lineage', Dr Hasan al-Shadhili, included in the proceedings of the symposium on genetics and genetic engineering.
44. 'Discussions of the Session of the Islamic Fiqh Academy on DNA Fingerprinting and Its Impact on Lineage, in Terms of Establishment and Denial', held during its fifteenth session in Rajab 1419 AH.