

THE VALIDITY OF GENETIC FINGERPRINTING IN ATTRIBUTING A CHILD BORN FROM RAPE

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Abstract:

Allah Almighty has made the marital bond sacred and a means to sustain the human race by having children, granting these children rights, the foremost and most important of which is lineage. Therefore, Islamic Sharia has preserved the authenticity of lineage and prohibited attributing children to anyone other than their fathers. Allah says in the Holy Quran: "Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers, then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful." (Surah Al-Ahzab, Ayah 5).

Undoubtedly, the issue of establishing lineage is one of the most significant problems occupying the attention of jurisprudence and comparative judiciary. Due to scientific advancements and the applications of genetic engineering, the issue of establishing lineage through genetic fingerprinting has become a matter requiring faster and broader jurisprudential and judicial efforts, specifically with the increasing number of illegitimate children resulting from the crimes of adultery and rape. Some contemporary jurists believe in the necessity of attributing the lineage of a child born from rape to their biological father, which has sparked a wide jurisprudential debate between supporters and opponents. Thus, we question the extent to which legislation and comparative judiciary have been influenced by contemporary jurisprudential opinions on attributing a child born from rape using genetic fingerprinting.

Keywords: Genetic fingerprinting, lineage, rape.

Introduction:

Lineage is one of the important rights established by the Islamic Sharia for the child and the parents. It is primarily a right for the child, and Islam has been keen to affirm and establish this right to protect and maintain the cohesion and strength of the Islamic community. It has made marriage the clear cause for this, not leaving it to people's whims and desires to attribute a person to whomever they love and deny it to whomever they do not. It invalidated illegitimate means, as the Prophet Muhammad (peace be upon him) said: "The child is for the bed, and for the adulterer is the stone." Doubtlessly, the issue of establishing lineage is one of the most significant problems occupying the attention of jurisprudence and comparative judiciary. Due to scientific advancements and the applications of genetic engineering, the issue of establishing lineage through genetic fingerprinting has become a matter requiring faster and broader jurisprudential and judicial efforts, especially with the increasing number of illegitimate children resulting from the crimes of adultery and rape. Some contemporary jurists believe in the necessity of attributing the lineage of a child born from rape to their biological father, which has sparked a wide jurisprudential debate between supporters and opponents. From this standpoint, and given the importance of the topic of lineage due to its connection to the family, which is the basic unit of society, I was motivated to study this topic. The study aims to understand the opinions of ancient and contemporary jurists on this issue, determine the stance of legislators and comparative judiciary, and highlight the justice and fairness of Islamic

Sharia in organizing the issue of lineage in general and the lineage of a child born from rape in particular.

Thus, we pose the following question: To what extent has the development of Algerian and comparative legislation and judiciary been influenced by contemporary jurisprudential opinions on attributing a child born from rape to their father using genetic fingerprinting?

Solving this issue required following the comparative analytical method by analyzing the opinions of jurists on attributing a child born from rape to their father using genetic fingerprinting, analyzing legal texts and judicial decisions on this matter, and comparing them with some legal systems and judicial efforts in Maghreb countries, especially Tunisia and Morocco. This is structured as follows:

- Introduction;
- Chapter One: The Ruling on Attributing a Child Born from Rape to Their Father Using Genetic Fingerprinting;
 - Section One: Concepts of Lineage, Attribution, Rape, Genetic Fingerprinting;
 - Section Two: The Stance of Islamic Jurisprudence on Attributing a Child Born from Rape Using Genetic Fingerprinting;
- Chapter Two: The Development of Maghreb Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting;
 - Section One: The Development of Algerian Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting;
 - Section Two: The Development of Moroccan and Tunisian Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting;
- Conclusion.

Chapter One: The Ruling on Attributing a Child Born from Rape to Their Father Using Genetic Fingerprinting

The issue of attributing the lineage of a child born from rape using genetic fingerprinting has sparked a wide jurisprudential debate, considering that the mother did not engage in the act willingly and did not intend to have this child. Jurists' opinions have varied between supporters and opponents. Before discussing these opinions, it is necessary to define the following terms: lineage, attribution, rape, and genetic fingerprinting in Section One, and then present the stance of Islamic jurisprudence on the lineage of a child born from rape using genetic fingerprinting in Section Two.

Section One: Concepts of Lineage, Attribution, Rape, Genetic Fingerprinting

In this section, we will address the linguistic and terminological definitions of the terms lineage, attribution, rape, and genetic fingerprinting through the following subsections:

Subsection One: Definition of Lineage

Linguistically, lineage means the unity of kinship and is used by linguists to refer to any connection through kinship. It is said that someone is related to someone else, meaning they are kin. The term "relative" refers to a close kin, and it is said that kinship in lineage is only through the fathers, hence the saying "he is related to his father and ancestors." A man of noble lineage is one with noble ancestors, and lineage can be from both the father and the motherⁱ.

Terminologically, some interpreters, including Ibn al-Arabi, defined it as: "Lineage is the mixing of water between the male and female in a legitimate mannerⁱⁱ." Contemporary scholars have provided several overlapping and similar definitions, all revolving around the linguistic meaning of connection and kinship. One such definition is: "Lineage is the blood bond that connects a person to their ancestors, descendants, and relativesⁱⁱⁱ."

Legally, lineage is defined as: "The relationship in which the child follows their father in law, religion, and civilization, upon which inheritance is based, resulting in marriage prohibitions and establishing parental and filial rights and duties^{iv}."

The Algerian legislator did not define the term lineage but organized it in the Algerian Family Code in Chapter Five, titled "Lineage," from Article 40 to Article 46. In this study, lineage refers to the natural or biological lineage between the father and the child born outside the framework of a legitimate relationship, i.e., through rape.

Subsection Two: Definition of Attribution

Linguistically, it is a request for something to be joined. To attribute someone to someone else means to claim them and relate them to oneself^v.

Terminologically, it is the acknowledgment of lineage, and it is said to be when a man requests the attribution of someone created from his semen outside the framework of marriage, according to the established legal conditions and regulations^{vi}. The acknowledgment of lineage is specifically called attribution by^{vii} the Maliki, Shafi'i, and Hanbali schools, while the Hanafi school rarely uses it for acknowledging lineage^{viii}.

Subsection Three: Definition of Rape

Linguistically, the word is derived from the verb "force," meaning to take something unjustly. To seize something by force is to "force" it, and to force someone into something is to "force" them^{ix}. Allah says: "And behind them was a king who seized every ship by force."^x

Terminologically, some jurists defined rape as: "Forcing a woman to engage in sexual intercourse without her consent or choice."^{xi} It is also defined as: "Any act of sexual penetration, regardless of its nature, committed against another using violence, coercion, or surprise."^{xii}

Legally, the Algerian legislator did not define rape but mentioned the term in Article 336 of the Algerian Penal Code. In contrast, Egyptian legislation defined it in Article 267 as "intercourse with a female without her consent."

Subsection Four: Definition of Genetic Fingerprinting

Linguistically, it is a compound term consisting of "fingerprint" and "genetic." We will define each term separately:

- **Fingerprint:** Derived from the verb "stamp," meaning to stamp with a finger. A fingerprint is the mark left by a finger.^{xiii}
- **Genetic:** Derived from the root "inherit," meaning inheritance. It is said that someone inherited glory or something else, and inherited from their father, wealth, and glory, meaning they inherited it from them.^{xiv}

Terminologically, contemporary jurisprudence defines it as: "The genetic traits that are passed from ancestors to descendants, which determine the identity of each individual through the analysis of a part of the DNA contained in their body cells."^{xv}

Legally, most world legislations have not defined it, despite adopting the technique and including it in their internal laws, recognizing its use in courts as evidence for proving or disproving matters in civil and criminal fields.

Section Two: The Stance of Islamic Jurisprudence on Attributing a Child Born from Rape Using Genetic Fingerprinting

Rape is one of the most heinous and vile crimes known to humanity throughout history. Due to the psychological and social effects it has on the victim, especially if a child is born from this heinous act, and given the current developments in our society, such as the emergence of genetic fingerprinting as conclusive and certain evidence for determining a child's lineage, many women's associations in Arab countries like Egypt, Morocco, and Jordan have called for intervention to support the raped victim who lives under psychological pressure due to this heinous crime. They argue that she should not also bear the lineage of a child she did not intend to have willingly. This has sparked a wide jurisprudential debate between supporters and opponents, considering the child as one born from adultery. In this section, we will explore the stance of those who oppose and their evidence in Subsection One, and the stance of those who support and their evidence in Subsection Two, followed by our opinion on this matter.

Subsection One: The Stance of Islamic Jurisprudence Opposing Attributing a Child Born from Rape Using Genetic Fingerprinting

Proponents of this view argue that it is not permissible to attribute the lineage of a child born from rape to the biological father, as the child is illegitimate and considered a child of adultery, taking its rulings. The child is attributed to the mother only if she is unmarried, and to the husband if she is married^{xvi}. This is the view of the four Imams and the Zahiri school. Among contemporary jurists, Sheikh Yusuf al-Badri, a member of the Supreme Council for Islamic Affairs in Egypt, Ali Gomaa, Yusuf al-Qaradawi, and Dr. Muhammad Abdul Munim al-Bari have expressed similar views, stating: "Facilitation is acceptable in Sharia as long as it does not conflict with a Sharia text. Otherwise, what do we say about the verse: 'Call them by [the names of] their fathers; it is more just in the sight of Allah.'^{xvii} The intended fathers are those from a legitimate marriage, not the biological father proven by tests, as lineage in Islam is only established through marriage."^{xviii}

They base their argument on the following evidence:

1. The saying of the Prophet Muhammad (peace be upon him): "The child is for the bed, and for the adulterer is the stone."^{xix} The indication is that the Prophet assigned the child to the legitimate husband and did not attribute it to the adulterer, indicating that a child born from rape is not attributed to the rapist^{xx}, as in Islam, a child claimed from adultery is not attributed to the adulterer, and the child is for the bed in all cases.^{xxi}
2. The hadith of Amr ibn Shu'ayb from his father from his grandfather, where the Prophet said: "Any man who commits adultery with a free woman or a slave, the child is a child of adultery, does not inherit, and is not inherited from."^{xxii} The indication is that the hadith explicitly states that a child of adultery is not attributed to the adulterer, and the ruling is generalized with the phrase "any man," meaning there is no difference whether the child is born on a bed or not.
3. It is narrated from the Prophet: "Whoever claims a child from a slave woman he does not own or a free woman he committed adultery with, it is not attributed to him, does not inherit, and is a child of adultery for the family of the mother, whoever they may be."^{xxiii}

The indication is that the hadith explicitly states that if the adulterer or rapist attributes the child born from rape, it is not attributed to him but rather to the mother.

4. Lineage is a blessing, and it comes from obedience, not from sin. Therefore, rape and adultery are not reasons for obtaining it.
5. The basis for establishing lineage is legitimate, valid marriage, which is established by specific Sharia evidence and its general principles.

Subsection Two: The Stance of Islamic Jurisprudence Supporting the Attribution of a Child Born from Rape Using Genetic Fingerprinting

Some scholars, including Urwah ibn al-Zubayr, Sulayman ibn Yasar, al-Hasan al-Basri, Ibn Sirin al-Nakha'i, Ishaq ibn Rahwayh, and a view of Abu Hanifa, Ibn Taymiyyah, and Ibn al-Qayyim, believe that a child born from adultery or rape should be attributed to the adulterer or rapist.^{xxiv} They base their argument on several pieces of evidence and reasoning, summarized as follows:

1. The verse: "Call them by [the names of] their fathers; it is more just in the sight of Allah..."^{xxv} The indication is that the verse explicitly requires attributing every child to their father whenever the father is known.
2. The verse: "And no bearer of burdens will bear the burden of another."^{xxvi} The indication is that attributing a child born from rape to the rapist serves a great interest for the child by preserving their lineage from being lost. Saying otherwise would harm the child and bring shame for a crime they did not commit, which contradicts the verse indicating that no soul bears the burden of another.

3. The hadith of Hilal ibn Umayyah and his wife in the incident of mutual cursing (li'an) between them, where the Prophet Muhammad (peace be upon him) said: "Observe her; if she gives birth to a child with dark eyes, full buttocks, and thick legs, then it belongs to Sharik ibn Sahma." When the child was born with these characteristics, the Prophet said: "If it were not for what has passed in the Book of Allah, I would have had a different ruling for her."^{xxvii} The indication is that the Prophet's statement "it belongs to Sharik ibn Sahma" means it belongs to the adulterer because it was created from his semen. However, the mother's oath denying adultery prevented attributing the child to the adulterer. If not for that, the child would have been attributed to him if he claimed it. This indicates that if an adulterer or rapist claims a child born from rape or adultery, and the mother is not married, the child should be attributed to him because it was created from his semen.
4. The analogy of the father from adultery to the adulterous mother: The child results from both their actions. If the child is attributed to the mother by all scholars because she gave birth to it, why should it not be attributed to the father if he claims it and acknowledges that it was created from his semen? If genetic fingerprinting proves he is the father, what prevents attributing the child to him if no one else claims it? Ibn al-Qayyim said: "The correct analogy requires it, as the father is one of the adulterers, and if the child is attributed to the mother and inherits from her, and lineage is established between the child and the mother's relatives, even though she committed adultery with him, and the child was created from the adulterers' semen, and they agreed that it is their child, what prevents attributing the child to the father if no one else claims it? This is pure analogy."^{xxviii}
5. The Sharia seeks to preserve lineage, care for children, and protect them from homelessness and loss. Islamic Sharia aims to achieve benefits and complete them, eliminate harms and reduce them. This is realized by attributing a child born from rape or adultery to the father if he claims it and there is no opposition.

Among the most important contemporary jurisprudential opinions advocating the necessity of attributing a child born from rape to the father using genetic fingerprinting is the opinion of Dr. Raafat Othman, Dean of the Faculty of Sharia and Law at Al-Azhar, who said: "...God Almighty has given us the knowledge to determine whether a person is the child of this man or that through what is known as DNA or genetic fingerprinting. In the case of a raped woman who gave birth from rape, genetic testing can be used to scientifically determine whether the child is the offspring of the accused or not."^{xxix}

Similarly, the fatwa of Sheikh Gad al-Haq Ali Gad al-Haq, former head of the Egyptian Fatwa House in 1980, stated: "...Since the established and agreed-upon Sharia principles in Islamic jurisprudence are that harm is not removed by harm and that necessities permit prohibitions... and since the established organizational rules are that the lineage of a pregnancy resulting from the accused's assault is established, and it encourages unlawful sexual relations, harm must be removed according to the standards set by Islamic Sharia. Since establishing lineage follows the marriage of the accused to the victim and this acknowledgment of lineage for this pregnancy is accepted from him legally, and he acquires paternity..."^{xxx}

It is clear from this fatwa that the following conditions are required for attributing a child born from rape to the father using genetic fingerprinting:

1. The perpetrator must marry the raped victim.
2. The father must claim the child as his, based on the marriage contract and acknowledgment, within the conditions required by Sharia.

After presenting the opinions of jurists supporting and opposing the attribution of a child born from rape using genetic fingerprinting and their evidence and arguments on this matter, we conclude that it is not permissible to attribute the lineage of a child born from rape to the father using genetic fingerprinting or otherwise, for the following reasons:

1. Attributing a child born from rape to the father facilitates the most heinous crime, which is rape, and spreads immorality among believers. Society members may commit this crime without fear of its consequences due to its trivialization.
2. Lineage is a blessing, and rape is a curse. God's blessings come from obedience, not sin, and rape is a sin, so lineage, which is God's blessing to His servant, is not established through it.
3. Affirming the principle of justice, as Allah says: "Indeed, Allah commands justice," and as the Prophet Muhammad (peace be upon him) said: "O My servants, I have forbidden injustice for Myself and made it forbidden among you, so do not wrong one another." Attributing a child born from rape to the father is unjust to the child born from adultery, who cannot be attributed to the father, even though the rapist committed the criminal act with his free will and is considered an adulterer as well.
4. Islamic Sharia is all about justice, mercy, benefits, and wisdom, suitable for all times and places, and capable of providing appropriate solutions to the issues and problems posed by societies.

Chapter Two: The Development of Maghreb Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting

Ancient Islamic jurists identified several means to establish lineage, including marriage, acknowledgment, evidence, physiognomy, and drawing lots. Most Maghreb legislations, including Algerian legislation, have adopted these means, especially the first three, which are agreed upon by scholars. The Algerian legislator stipulated them in Article 40 of the Algerian Family Code^{xxxii}, the Moroccan legislator in Article 158 of the Moroccan Family Code^{xxxiii}, and the Tunisian legislator in Article 68 of the Tunisian Personal Status Code.^{xxxiii}

However, with biological advancements and the introduction of DNA technology, known as genetic fingerprinting, these legislations have been influenced by amendments to their laws. The Algerian Family Code added this new technique to the means of establishing lineage under Ordinance 05/02 dated 27-02-2005, confirming it in Article 40, paragraph two, of the Family Code, as did the Moroccan and Tunisian legislators.

Regarding the judiciary's stance, it has aligned with the law, especially after the recent amendments to family laws. The Algerian, Moroccan, and Tunisian judiciaries have confirmed that resorting to medical expertise is conclusive evidence that cannot be contradicted except by forgery. It is noteworthy that DNA technology is usually used in paternity lawsuits where there is a dispute over establishing the lineage of an illegitimate child—whether a child of adultery or rape—from the father. We will discuss the development of Algerian legislation and judiciary in attributing a child born from rape using genetic fingerprinting in Section One, and the development of Moroccan and Tunisian legislation and judiciary in Section Two.

Section One: The Development of Algerian Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting

Despite the Algerian legislator's interest in the issue of lineage, where it limited the means of establishing it in Article 40 of the Algerian Family Code before the amendment to valid marriage, evidence, and mistaken intercourse, reality shows that there are cases where it is difficult to establish the child's lineage, especially in illegitimate relationships (rape), making the mentioned means of establishing lineage insufficient to solve all paternity cases.

However, after the recent amendment to the Family Code in 2005, it allowed resorting to scientific methods (genetic fingerprinting) to establish lineage in line with scientific advancements in the medical and biological fields. However, it remained silent on organizing the issue of attributing a child born from rape to the father, unlike some Arab legislations that recognized the right of an illegitimate child to natural lineage to their parents, leaving the matter to the judge's discretion.

Referring to the Supreme Court's jurisprudence, it distinguishes between a child of adultery and a child of rape, establishing the latter's lineage in many of its judicial decisions, including:

Judicial Decision No. 355180 dated 05-03-2006, which stated: "...The judges did not respond to the appellant's request to attribute the lineage of the child S.M. to the respondent as his father, as proven by the DNA medical expertise, relying on Article 40 of the Family Code, even though the latter indicates that lineage is established by several means, including evidence. Since the scientific expertise (DNA) proved that this child is the respondent's son from his loins based on the relationship he had with the appellant, they should have attributed this child to his father, the appellant, to avoid confusion between legitimate marriage addressed in Article 41 of the Family Code and the attribution of lineage resulting from an illegitimate relationship."^{xxxiv}

It is noted from this decision that the judges considered genetic fingerprinting as conclusive evidence in establishing the lineage of an illegitimate child, regardless of whether the relationship between the parties was legitimate or not.

The Supreme Court's judicial decision dated 12/05/2011, File No. 617374, stated: "...Referring to the provisions of Article 40 of the Family Code, lineage is established by valid marriage, acknowledgment, evidence, and mistaken intercourse. Therefore, the judges should have verified the appellant's claim that the respondent registered the girl in his name after raping her and entering into a marriage contract subsequent to the pregnancy to avoid criminal prosecution. If rape is proven by a judicial ruling, it is considered intercourse by coercion and is classified as mistaken intercourse, establishing lineage according to the aforementioned article."^{xxxv}

It is noted from this decision that the judges classified rape as intercourse by coercion, establishing lineage, and they erred in this classification. Rape, as previously defined, is any act of sexual penetration, regardless of its nature, committed against another using violence, coercion, threat, or surprise, or as defined in this decision as intercourse by coercion, which is entirely different from mistaken intercourse in its three forms: mistaken in place, mistaken in contract, and mistaken in action.

The Supreme Court has followed the same approach in many of its decisions^{xxxvi}, confirming the establishment of the lineage of a child born from rape to the father, not a child of adultery, even though the rapist is considered an adulterer as well, as long as his free will was directed towards committing this act, which is criminalized by Sharia and law, especially since we are establishing lineage to the perpetrator, not the victimized woman.

Section Two: The Development of Moroccan and Tunisian Legislation and Judiciary in Attributing a Child Born from Rape Using Genetic Fingerprinting

The Moroccan legislator stipulated the rules of lineage in the previous Personal Status Code before the issuance of the Code in 2004, in chapters 83 to 96 within the Book of Birth and Its Consequences^{xxxvii}, derived mainly from Maliki jurisprudence. It is noted that the Personal Status Code before the amendment did not include any explicit reference to the possibility of relying on medical expertise in general to establish or deny lineage, especially in its aspect based on genetic engineering.

However, feeling the need to keep legislation in line with the developments of this era and its modern techniques in the field of forensic medicine, especially what is known in genetic engineering, the Moroccan legislator adopted genetic fingerprinting in the field of lineage through Articles 153 and 158 of the Moroccan Code.^{xxxviii}

It is noted that the Moroccan legislator resolved the issue of attributing a child born from rape to the father using genetic fingerprinting, according to Article 148, which states: "No effect of legitimate lineage results from illegitimate paternity for the father," which was confirmed by the Moroccan judiciary, which settled on the inadmissibility of attributing a child born from rape to the father and considered it a child of adultery. This was stated in the famous ruling of the Tetouan Primary Court on 31-03-2008, File No. 143/1367: "...Since the reasons for attributing lineage and the means of establishing lineage, expertise is only a means of proof and not a reason for attributing lineage, as

rape is not a reason for attributing lineage to the father, which negates the request lacking legal basis and requires its rejection."^{xxxix}

Similarly, the decision of the Court of Cassation dated 26-04-2011 stated: "...Since lineage is a legitimate bond between the father and his child, and it is not obtained by the prohibited, and if the judicial expertise according to Article 158 of the Family Code is one of the means of establishing legitimate lineage arising from a valid, invalid, or void marriage contract with good faith or by mistaken action, contract, or place, and the Supreme Court, when it was proven that the pregnancy resulted from rape and the accused was criminally convicted in File 337/04, justified its ruling by stating that rape is not a reason for attributing legitimate lineage because the limit and lineage do not coexist, and it excluded the request, basing its decision on Articles 150, 152, and 158 of the Family Code and justified it, responding to the applicant's defenses and dismissing what was raised without basis."^{xl}

As for the Tunisian legislator, it addressed the issue of lineage in the Personal Status Code, adopting the lineage provisions contained in Islamic Sharia, establishing three means to establish lineage: marriage, acknowledgment, and evidence, according to Article 68 of the Tunisian Personal Status Code.^{xli} It is noted that the Tunisian legislator did not organize the issue of natural paternity in the Personal Status Code and did not establish special provisions for it except for Article 152, which spoke about a child of adultery, acknowledging only the child's relationship with the mother and her relatives^{xlii}. However, in light of calls to protect children's rights, foremost among them the right to identity, and after the issuance of the Child Protection Code in 1995, the Tunisian legislator in 1998 moved to establish a legal system for children born out of wedlock by enacting Law No. 75 dated 28 October 1998, which recognized the right of a natural child to establish paternity, clearly stated in Article 1 of the 1998 Law concerning the establishment of natural paternity by acknowledgment, witness testimony, or genetic analysis.^{xliii}

Referring to the Tunisian judiciary, before the new amendment, it tended to reject the attribution of an illegitimate child, including a child born from rape, as confirmed by the civil decision No. 26431 dated 2 June 1992, which stated: "...As long as the testimony relied upon by the plaintiff does not indicate the existence of a valid or invalid marriage, it is not suitable as a basis for lineage, as adultery invalidates legitimate lineage when denied or rejected by the person to whom lineage is attributed, and it is a legal reality established by judicial jurisprudence and court practice."^{xliv}

However, after the issuance of Law 75/1998, Tunisian courts in many judgments adopted genetic analysis to establish illegitimate paternity, including the primary ruling issued by the Sfax Primary Court on 11-06-1999. The facts of the case are that the mother of a child born out of wedlock filed a paternity suit based on witness testimony, which the father denied. The court preliminarily ordered genetic analysis, which proved the father's paternity to the child in question, and the court ruled to attribute the father's surname to the child, basing its judgment on the child's paternity being established by unchallenged witness testimony and the genetic analysis authorized by the court.^{xlv}

It is noted from the above that the Tunisian legislator was the first among Arab legislators to explicitly allow the attribution of an illegitimate child to the father, including a child born from rape, which allowed its judiciary to show flexibility towards illegitimate children in general and children born from rape in particular.

Conclusion:

Lineage is a topic to which Islam has given special importance, emphasizing the need to investigate and establish true lineage. It has been affirmed with all evidence and denied only through the process of li'an (mutual cursing), emphasizing that it should be within the framework of a legitimate relationship, namely marriage. However, with scientific advancements, scientific methods based on tissue analysis have emerged, regardless of whether the context is legitimate or not. Although some Maghreb legislations, including Algerian legislation, have clarified the frameworks for establishing lineage, such as valid marriage and mistaken intercourse, the judiciary has responded to modern

scientific developments in biology and forensic medicine by adopting modern scientific methods for establishing lineage. This suggests that in the future, these legislations may imply that a natural father can be attributed to his child even if it is within an illegitimate relationship (adultery or rape).

From this study, I have reached the following conclusions:

1. Rape is the coercion of a woman into intercourse without a legitimate basis, constituting coercion into adultery.
2. Attribution is the acknowledgment of lineage, and the term "attribution" is used by the Maliki, Shafi'i, and Hanbali schools, while the Hanafi school rarely uses it for acknowledging lineage.
3. The issue of attributing a child born from rape using genetic fingerprinting is controversial in Sharia. Given the demands of many women's associations in Arab countries like Egypt, Morocco, and Jordan to intervene to support the raped woman, some contemporary jurisprudence has deemed it permissible to attribute a child born from rape to the father using genetic fingerprinting. However, we support the view that prohibits this, affirming the principle of justice as stated in the Quran: "Indeed, Allah commands justice." And in accordance with the saying of the Prophet Muhammad (peace be upon him): "O My servants, I have forbidden injustice for Myself and made it forbidden among you, so do not wrong one another." Attributing a child born from rape to the father is unjust to the child born from adultery, who cannot be attributed to the father, even though the rapist is considered akin to an adulterer as long as his free will was directed towards committing this heinous act. Moreover, this permissibility may significantly contribute to the spread of rape.
4. Maghreb legislation in general, and Algerian legislation in particular, derive personal status laws, including lineage laws, from Islamic Sharia, adopting the majority view that prohibits attributing a child born from rape to the biological father, in accordance with the saying of the Prophet Muhammad (peace be upon him): "The child is for the bed, and for the adulterer is the stone." However, amid campaigns calling for amendments to family laws and demands to equate the status of illegitimate children with legitimate ones, as well as significant scientific advancements, the Tunisian legislator initiated the issuance of a law in 1998 concerning the assignment of a family name to abandoned or unknown parentage children and allowed the use of genetic analysis to establish paternity, whether legitimate or illegitimate.
5. Algerian and Tunisian judiciaries have been influenced by new developments in the medical and biological fields, resulting in the permissibility of attributing a child born from rape to the father using genetic fingerprinting. This followed the inclusion of scientific methods (genetic fingerprinting) in the means of establishing lineage after the amendment of the Algerian Family Code in 2005 and the issuance of the Tunisian law regarding children born out of wedlock in 1998.
6. The allowance by Maghreb judiciaries, including Algerian courts, to attribute a child born from rape to the biological father is a clear violation of the noble Islamic Sharia, which has been more compassionate towards illegitimate and unknown parentage children than human rights conventions for a long time, as it legislated the system of "kafala" (sponsorship), embodying the highest principles of human mercy.

Based on these conclusions, we propose the following:

1. The legislator should explicitly state that rape is not a reason for legitimate lineage and that biological paternity has no legal effect.
2. Judges should receive comprehensive legal and Sharia training in personal status matters, given the field's predominantly Sharia nature, to keep pace with developments and achieve correct legal reasoning.

3. Establish an automatic communication body between the Supreme Court and higher fatwa authorities to ensure judicial decisions do not contradict Islamic Sharia and to maintain constants despite numerous jurisprudential issues.
4. Provide care and attention to illegitimate children, ensuring their educational, moral, and religious upbringing.

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ⁱⁱ Ibn al-'Arabi, Abu Bakr. *Ahkam al-Qur'an* (The Rulings of the Qur'an). Edited by Muhammad Ali Muhammad Al-Bajjawi, Vol. 3, 3rd ed., Dar Al-Fikr Al-'Arabi, Cairo, 1983, p. 1426.

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^{xxxii} Article 158 of the Moroccan Family Code (Mudawwanat al-Usra): "Lineage is established by lawful wedlock (Firāsh), by the father's acknowledgment, or by the testimony of two trustworthy witnesses."

^{xxxiii} Article 68 of the Tunisian Code of Personal Status: "Lineage is established through lawful wedlock (Firāsh), the father's acknowledgment, or the testimony of two or more trustworthy witnesses."

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"Lineage is established by lawful wedlock (firāsh), by the father's acknowledgment, by the testimony of two just witnesses ('adlain), or by evidence based on public reputation (bayyinat al-samā') that the child was born on his wife's bed."

^{xxxviii} Article 90:
"A child cannot be disowned by the man, nor can a pregnancy be denied as being from the husband, except by a judicial ruling."

Article 91:
"The judge shall base his ruling on all legally prescribed means of proving lineage."

^{xxxix} Article 153 of the Moroccan Family Code:
"...Lawful wedlock (firāsh), under its legal conditions, constitutes conclusive evidence of lineage that may only be contested by the husband through a definitive expert report."

Article 158 of the same Code:
"Lineage may be proven by all other means established in Sharia, including judicial expertise." Ruling of the First Instance Court of Tetouan, issued on 31-03-2008, under No. 13/07/1437, published in Journal of Civil Judiciary, Family Research and Case Series, Part 1, 2013, p. 242.

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"Lineage is established by lawful wedlock (firāsh), by the father's acknowledgment, or by the testimony of two or more trustworthy witnesses."

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"The father, mother, or public prosecutor may submit a request to the competent Court of First Instance to assign the father's surname to a child, if it is proven by acknowledgment, witness testimony, or genetic analysis that the person in question is the father of that child"

^{xliii} Article 1 (excerpt) from the Tunisian Personal Status Code:
"The father, mother, or public prosecutor may submit a request to the competent Court of First Instance to assign the father's surname to a child, if it is proven by acknowledgment, witness testimony, or genetic analysis that the person in question is the father of that child."

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