

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Eminent Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Fiqhi Facebook Page

Answer to Question

Lineage of the Child based on Genetic (DNA) Test

To: Najmeddine Khcharem

Question:

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh

Our honourable Sheikh, can a man deny the lineage with his son if it is based on genetic (DNA) test? Barak Allah Feek

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

First, in the case of disagreement in proving any matter, it is permissible to use all the correct means of proof and ensure they are accurate ... These methods include DNA, and scientific means of investigation, and any means of proof that realises the correct opinion in any matter, **unless there is a presence of a Shariah text specific to a particular matter, then that text becomes completely binding.**

DNA has one composition in humans and in all living organisms. It is composed of two bands glued and wrapped around each other like the spiral emergency ladder. Its sides consist of particles of sugar (deoxyribose) and phosphate, and the steps of this ladder consist of a set of nitrogenous bases. This means that each band consists of units of sugar, phosphate and a nitrogenous base. Each unit is called a nucleotide.

These nucleotides are precisely arranged. This compact band of nucleotides is divided into parts and units called genes. Each gene has a specific characteristic that gives the instructions needed to make a certain type of protein; the raw material that makes up the tissues of the body.

These genes or "genetic fingerprints" carry hereditary traits in parents and children. They are similar characteristics created by Allah (swt) to link genealogies together, if we theoretically assume the accuracy of the examination and accuracy of the results of the DNA between the father and his son, that is, we obtained the genetic facts from this genetic fingerprint as deposited by the Creator (swt), it shows the lineage of the child to his father. **However, experts and specialists say that there is probability of error in the results of the examination due to what happens during the analysis, of human or laboratory errors, or any contamination of the sample, as well as 'doubt' in the genuineness of the examiner and his dedication to the examination profession without falling under other factors. All this affects the results.**

Therefore, the results of the DNA test are not necessarily definitive because of the possibility of error in the result due to the factors mentioned above. If the above errors are dealt with, it can be used as means of proof for any issue that has no Shariah text to substantiate it, however if there is a Shariah text it must be completely adhered to.

For example, during the identification of an unknown body... or to confirm the birth of a mother, or when there is disagreement in the hospitals ... it may be verified and investigated by any correct means of verification, and any proper method of identification and verification ... such as a DNA test, in addition to the serious investigation with those in the area where the body was found, with the staff of the maternity ward in the hospital, and by any means of proper verification, so that the correctness of the result obtained can be assured ... All this is permissible because there is no specific Shariah text to prove them, and

they fall under the general rules. However, **if a Shariah text is given regarding the matter then it is adhered to alone.**

Second: Now we come to your question about the denial of the child's lineage (paternity)... There is a Shariah text regarding this issue, therefore it should be adhered to alone, as follows:

1- The DNA test results do not serve as evidence for this issue, because the proof or denial of the lineage of child to the husband has its own evidence in Islam, that the lineage is not proven or denied without it, and the fatwas issued after the spread of DNA research do not affect this. The fatwas from fatwa houses, especially in Egypt and of the Waqf committees, and especially in Kuwait, with the various opinions on the subject. Some of them permit the use of DNA test in proof and denial of the lineage, and some permit its use only in denial but not the proof. Some of them permit it to prove the lineage if there is a marital relationship, but do not permit in cases of Zina (fornication), and some who are smitten by the Western culture have allowed it even in proving the lineage in cases of Zina (fornication)!!

2- The correct ruling on this matter is what Shariah specifically defined regarding the subject of lineage, and we explained this in *The Social System*, it has been mentioned in the subject of lineage:

“Regarding the husband, when his wife gives birth to a child, it is possible that it is from him if she gave birth to it after more than six months from the date of marriage. The child is his due to the saying of the Prophet: «الْوَلَدُ لِلْفِرَاشِ» **“The child belongs to the one on whose bed it is born (al-walad lil-firaash)”** [Agreed upon. Narrated on the authority of Aisha (ra)]. In short, as long as the woman is married to the husband and she gives birth to a child after six months from marriage, it is definitely the child of the husband.

However, when his wife gives birth to a child after six months and he is sure that this child is not his, then it is allowed for him to disown it according to certain conditions which he must fulfil. If these conditions are not confirmed, then there is no point in him disowning it. Rather, the child remains his, whether he wants it or not. These conditions are:

First: The child that he disowns as his must be born alive. He cannot disown the lineage of the child if it is born dead because there is no divine rule pertaining to the disowning of a still born child.

Second: He has not already acknowledged, either explicitly or implicitly, that it is his child. If he has acknowledged explicitly or implicitly by indication that the child is his, then after that it will not be valid for him to disown its lineage to him.

Third: That the disowning of the child should be at particular times and in particular situations. **These are the time of delivery or time of buying the necessary things for it, or the time when he knew that his wife had given birth if he was absent.** The lineage of the child cannot be disowned at other than these times and situations. When his wife gives birth to a child and he remains silent, not disowning it even though he had the opportunity to do so, then its lineage is related to him and he will not have the right to disown it after that. The choice is determined according to the place at which he came to know of and his ability to disown it. If he had known about the child and it was possible for him to disown it but he did not disown it then its lineage is established because the Messenger of Allah (saw) said: «الْوَلَدُ لِلْفِرَاشِ» **“The child belongs to the one on whose bed it is born (al-walad lil-firaash).”** [Agreed upon. Narrated on the authority of Aisha (ra)]

Fourth: The disowning of the child should be followed by imprecation (li'aan) or he should disclaim it through imprecation. The child will not be disowned from him unless he disclaims it through complete imprecation. When these four conditions have been fulfilled, then the child is disowned and given to the wife. Ibn Umar reported that «أَنَّ رَجُلًا لَاعَنَ امْرَأَتَهُ فِي زَمَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنْتَفَى مِنْ وَلَدِهَا، فَفَرَّقَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمَا، وَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ» **“A man imprecated his wife in the time of the Messenger of Allah (saw) and her child was disowned so the Messenger of Allah (saw) separated them and gave the child to the wife.”** [Reported by al-Bukhari]

Li'aan (oath of condemnation) is derived from li'aan (curse) because each one of the spouses curses him/herself (in the fifth time) if s/he is lying. The origin of it is in His (swt)'s saying: **«وَالَّذِينَ يَزْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ * وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ * وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ * وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ»** **And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful * And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars * But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars * And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful”** [An-Nur: 6-9]

If the conditions of the disownment of the child are not fulfilled then it is not disclaimed and its paternity is ascribed to the husband and all the rules of fatherhood will be binding on him.

These are the Shar'i rulings regarding the lineage and its disownment, and only this evidence is used for that.” **End quote**

Therefore, the child's lineage is not denied using DNA test, but only according to the conditions stipulated by the Sharia above

Third: It is worth mentioning that Islam has taken great care of lineage, and from the extensive texts on this matter are:

Bukhari narrated from Sa'ad (ra) that he said, I heard the Prophet (saw) say: **«مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ، وَهُوَ يَعْلَمُ أَنَّهُ غَيْرُ أَبِيهِ، فَالْجَنَّةُ عَلَيْهِ حَرَامٌ»**. **“Whoever ascribes himself to someone other than his (real) father, knowing that he is not his (real) father, Paradise is forbidden for him!”**

Ibn Maja narrated from Abdullah ibn Amr that he said, the Prophet (saw) said: **«مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ لَمْ يَرِحْ رِيحَ الْجَنَّةِ، وَإِنْ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ خُمْسِمِائَةِ عَامٍ»**. **“Whoever ascribes himself to someone other than his (real) father, will not smell the scent of Paradise; its scent is smelt from a distance of five hundred years.”**

Narrated from An-Nassa'i in *As-Sunan Al-Kubra* from Abu Huraia, that he heard the Prophet (saw) say: **«حِينَ نَزَلَتْ آيَةُ الْمَلَاعِنَةِ: أَيُّمَا امْرَأَةٍ ادْخَلَتْ عَلَى قَوْمٍ مِنْ لَيْسَ مِنْهُمْ، فَلَيْسَتْ مِنَ اللَّهِ فِي شَيْءٍ، وَلَنْ يُدْخِلَهَا اللَّهُ جَنَّتَهُ، وَأَيُّمَا رَجُلٍ جَحَدَ وَلَدَهُ، وَهُوَ يَنْظُرُ إِلَيْهِ احْتَجَبَ اللَّهُ مِنْهُ، وَفَضَحَهُ عَلَى رُءُوسِ الْأَوَّلِينَ وَالْآخِرِينَ»** **“When the verse of Mula'ana (Imprecation) was revealed: Any woman who give her child a lineage that is not his, she is not from Allah in any thing, and she will not enter Jannah, And any man who denies his paternity to a child, while he knows it is his son, Allah will remove him from His mercy, and Allah will humiliate him in front of the people.”**

Your brother,

Ata Bin Khalil Abu Al-Rashtah

7 Rabi' al-Akhir 1439 AH

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The link to the answer from the Ameer's Facebook page:

<https://www.facebook.com/AmeerhtAtabinKhalil/posts/744893542374386>

The link to the answer from the Ameer's page on Google Plus:

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