



## The Authenticity of The Genetic Fingerprint in Algerian Law

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### Abstract:

It is known that every scientific development is accompanied by a social development, in order to adapt to the current reality, and from this perspective, we find that the legislator amends the provisions of the law, as it is a common social phenomenon that is affected and adapts to the prevailing situation of social relations within society, and there is no doubt that the lineage occupies priority in those relations, as long as the most powerful relationships that come from the blood link, and therefore the people of law must highlight more the subject of the genetic footprint, so the legislator is called for the enactment of legal rules that are in line with the size of scientific development to overcome the barriers and traditional rules and their restrictions.

The Algerian legislator of other comparative legislation keeps pace with scientific and technological development, and seeks to modernize the judiciary in relying on modern and more accurate means in the field of proving descent to preserve the child's right to identity by proving his lineage.

**Keywords:** genetic fingerprinting, proof of lineage, identity, scientific means

### Introduction:

Genetic fingerprinting is one of the strongest and most accurate scientific techniques reached by modern science in biology field, and it is one of the most outstanding scientific means of knowing the identity of people, through their genetic characteristics.

The genetic fingerprint has also become used as a semi-conclusive presumption in criminal cases, especially in the field of criminal proof, in order to reveal criminals and their identities. This scientific evidence has raised many problems, as it influences the freedom of the personal space of the man by violating the principle of the personal sanctity of the person, and for that it disrupts the balance between apply punishment on them and the right of the state to track the trace of criminals, and the inadmissibility of their legally guaranteed rights.



Therefore, the Algerian judiciary, like other jurisdictions in many countries of the world, depends on this modern means of proof, whether the proof is criminal or civil, because it confirms the results and the error in it is almost non-existent.

The subject of electronic fingerprinting is of great importance to the Algerian legislator, who has specific it with a special law<sup>1</sup> that specifies its provisions and how they are used in judicial proceedings. This law was followed by an executive decree<sup>2</sup> of the Central Interest Systems for Genetic Fingerprints, which is considered to be a bank in which genetic fingerprints are kept.

Genetic fingerprinting used to be famous in Britain in the end of the last century, and it was called the "final identity investigator" because it contains all the required and basic characteristics. In the mid-1980s, some companies for the identification of genetic fingerprints were founded by the discoverer of the genetic fingerprint, Dr. Alec" in 1987, the pioneer in the possibility of conducting a genetic fingerprint examination within 48 hours, and it was also reached the possibility of conducting an examination from the trace of saliva adhered with a postage stamp after several years<sup>3</sup>, and the modern science is still in the continuous search for the new in this field in order to serve humanity and show the credibility of things with conclusive tangible proof.

The goal of raising this topic is the legal definition of the genetic fingerprint and its provisions in Algerian legislation, and to show its authenticity in proof in personal status among the similar means of proof in the case of descent. The research has required the use of the descriptive method when defining the genetic fingerprint, its status, the extent of its authenticity and controls, and the framework for it in proving lineage. This study also required the use of the analytical method when addressing the legal texts regulating the provisions of the genetic fingerprint in Algerian law.

Thus, the following forms arise, what is the concept of genetic fingerprinting? And what is its authority for proving lineage in Algerian law?

To answer the forms, we have adopted the following plan:

**The first research** was dedicated to defining the genetic fingerprint, its characteristics and the extent to which it is used in proving lineage, while **the second research** is in which the genetic fingerprint is authenticated to prove the lineage. The position of the Algerian legislator

### **Thesis 1: The conceptual framework of genetic fingerprinting**

Genetic fingerprinting is a modern term, and a lot of opinions have been contradicted about its definition and a jurisprudential and legal debate is due to its modernity, multiplicity of functions

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<sup>1</sup> - The Algerian legislator issued Law No. 16-03 of June 22, 2016, which specifies the methods of using the genetic fingerprint in judicial proceedings.

<sup>2</sup> - Executive Decree No. 17/277 of 09 October 2017 regulating the central origin of genetic fingerprints.

<sup>3</sup> - Research by Alec Jeffrey and D. Saad Al-Din Al-Hilali, Genetic Imprint and its Legal Relationship, Authoring, Localization and Publishing Committee, 01, 2001, p. 32.



and overlap with some other genetic terms. The genetic fingerprint differs from it from a biological point of view, and also differs in Islamic jurisprudence about it in positive law, which prompted us to search for the concept of this new technique and highlight its features.

### **The first requirement: the linguistic and idiom concept of genetic fingerprinting**

This method developed in our contemporary time in the field of proving lineage when the traditional means known in law and Sharia are ineffective is the genetic fingerprinting, on which many civil legislations in the world, as well as Algerian civil legislation, has recently become dependent. Before detailing on the subject of genetic fingerprinting, it should be defined in language and terminology.

#### **Section I: Linguistic definition of genetic fingerprinting**

Genetic fingerprint is a complex term consisting of two words fingerprint and heredity, and fingerprint is the effect of finger sealing<sup>4</sup>.

Fingerprints if they are sealed with his fingertip, and the fingerprint is the impressions left by the fingers when they come into contact with a wet surface, which are identical to the shapes of the dream lines that cover the skin of the fingers, and are not similar at all even in the fingers of one person, and it was also known as painting on canvas, and the Arabic Language Association has agreed to formulate the fingerprint in the sense of traceability and the meaning of trace at all, so it is said that a person who left his mark he has a trace and is often distracted to a trace of the finger<sup>5</sup>.

**Second: Inheritance** are known among the Arabs in the sense of transfer, so his father inherited the thing, for example, that is, he introduced him into his money, and it is said that I inherited a person from a person, that is, I made him an inheritance. And I inherited the dead and his heir, that is, leaving him an inheritance<sup>6</sup>.

As for genetics it is the science that examines the transmission of the traits of a living organism from generation to generation, and explains the phenomena related to the way this transmission<sup>7</sup>.

#### **Section II: Genetic fingerprinting in terminology**

One of the best benefits of the genetic fingerprinting is the knowledge of fingerprints to infer a person's identity to attach him to his lineage, through what is imprinted from their fingerprints on the polished bodies, which is a strong presumption of knowing a person's identity. In the modern era, scientists have worked hard to define it as a new scientific term. The Islamic Fiqh Assembly of the Islamic World League agreed to the previous definition of the Islamic

<sup>4</sup> - Hossam Al-Ajmad, The Genetic Fingerprint and Its Evidence In Criminal Proof And Lineage, Al-Halabi Publications, Beirut, Lebanon, Taw 01, 2010, P. 19.

<sup>5</sup> - Abu al-Fadl Jamal al-Din Muhammad bin Makram bin Muqar, Language of Arabia, Volume 12, DTN, pp. 50-51.

<sup>6</sup> - same reference, p. 177.

<sup>7</sup> - Ibrahim Anis, Middle Dictionary, Qatar Kuwaiti Press, Kuwait 1985, p. 1024.



Organization for Natural Sciences, where it said: "The genetic fingerprint is the genetic structure in relation to genes, that is, the genes that indicate the identity of every particular human being."<sup>8</sup>

Scientifically, the genetic fingerprint is chemical units that are used in genes and distributed in a way that distinguishes each person from the other, and it consists of two parts of pigments, a fissure that inherits the person from his father, and another inherits it from his mother to form a new dye, which is the combination of the two dyes<sup>9</sup>.

**First: The jurisprudential and legal definition of the genetic fingerprint** through the previous definitions shows the meaning and function of the genetic fingerprint, and the jurists have agreed that it indicates the identity of each individual person, so it has included most of the modern legislation in its laws, either for proof in civil or criminal subjects, or as evidence of negation in the same matters.

- 1- **The jurisprudential definition:** The genetic fingerprint is the genes that live in a certain environment, which are attributed to the genes that indicate the identity of a person himself, and scientifically it is a sure and conclusive method, and can be confirmed that it is not wrong, in determining the character of a person and knowing his distinctive characteristics for him<sup>10</sup>. It is also according to the French jurist specializing in genetics, the genetic fingerprint is the genetic identity necessary for every human being, which is shown by genetic analysis and allows to identify people with almost complete certainty<sup>11</sup>.
- 2- **Legal definition:** It is known that the definitions are not the work of the legislator, but the Algerian legislator defined the electronic fingerprint through Article 2 of the law despite 16/03<sup>12</sup> as follows: The genetic fingerprint is a sequence in the unencoded area in the DNA, which is the sequence of the nickel group, and the chromosomal DNA (DNA) also defined as Deoxyribonucleic, the binary structure that stores all the basic information of the cell structure in the organism. It consists of:
  - **Encoded areas in the DNA:** areas of DNA encoding a certain protein.
  - **Non-coding areas of DNA:** DNA regions do not encode for a particular protein.

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<sup>8</sup> - Mohammed Al-Madani Busaq, The position of Sharia and positive laws on the use of the genetic fingerprint in criminal proof, D.T., Emirates Union Library, Oman, 2007, p. 47.

<sup>9</sup> - Attia Ammar Turki, Genetic Footprint and Its Impact on Criminal Proof, Journal of Legal Studies, Dar Al-Hikma, Baghdad, Issue 22, Faculty of Law, University of Baghdad, Iraq, 2007, P. 77.

<sup>10</sup> - Symposium on Genetics, Genetic Engineering and Gene Therapy, Publication of the Islamic Organization for Medical Sciences, Kuwait, 13, 15 October 1988, Part 02, p. 1050.

<sup>11</sup> - Abdul Haman Ahmed Al-Rifai, Genetic Footprint and its Provisions in Islamic Jurisprudence and Positive Law, Comparative Jurisprudential Study, 01, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2013, p. 44.

<sup>12</sup> - Law No. 16/03 of 15 July 2016 on the use of genetic fingerprinting in judicial proceedings and the identification of persons, JRJ.R. 37, p. 53, of 22 June 2016.



- **Genetic analysis:** the set of steps carried out on biological samples in order to obtain a genetic fingerprint<sup>13</sup>.

In the conclusion of legal definitions, the genetic fingerprint "is the original fixed genetic identity of every human being, which is provided by the method of genetic analysis and allows the identification of individuals with almost complete certainty"<sup>14</sup>.

However, much of the jurisprudence was not preoccupied with the legal definition of the genetic footprint, and that French jurisprudence was the closest response to the legal concept to a large extent.

### **The second requirement: characteristics of the genetic fingerprint and its importance**

Scientific and biomedical research have proven that genetic fingerprinting has characteristics and advantages. It is a genetic technique that has accuracy and credibility, making it one of the strongest pieces of evidence compared to other evidence.

To know these features and specificity that are unique to the genetic fingerprint, it must be analyzed and extracted through special scientific and technical methods, and one of the most necessary features of the genetic fingerprint.

#### **Section I: Endurance and difference from person to person**

Recent scientific studies have proven the ability of DNA to withstand bad weather conditions such as high temperatures, in addition to the possibility of genetic fingerprinting in nuclear or dry blood contaminations that have been taken for a long time, and can be taken from bone residues, especially the bones of the teeth. In addition to any other biological pollutants present at the scene such as hair, blood, and skin<sup>15</sup>.

The most important feature of the genetic fingerprint is that it is different from one person to another. There are no two people on earth who are similar in fingerprints except for true identical twins, that is, twins of one sperm and one egg, although they differ in fingerprints<sup>16</sup>.

#### **Section II: Definitiveness of genetic fingerprinting results in proof**

The genetic fingerprint is considered definitive or semi-conclusive in determining the percentage of its validity in determining the identity of its owner between 98% and 100%.

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<sup>13</sup> - Article 02 of Law No. 16/03.

<sup>14</sup> - Criminal cassation, session of 21/10/1968, collection of criminal cassation provisions 1968, Arab Republic of Egypt, p. 850.

<sup>15</sup> - Fouad Abdel Moneim Ahmed, Genetic Fingerprint and its role in criminal proof between Sharia and the Law, Egyptian Library, Ahmed Zulfikar, Lausanne, Alexandria, Egypt, DT, p. 17.

<sup>16</sup> - Hosni Mahmoud Abdel Dayem, The Genetic Fingerprint And The Extent Of Its Authenticity In Proof (A Comparative Study Between Islamic Jurisprudence And The Law), Dr. T., Dar Al-Fikr University, Al-Zibatiya, Alexandria, Simah 2009, Pp. 95-96.



The genetic fingerprint and the DNA molecule also have the ability to clone and therefore can transmit one type of one generation to another<sup>17</sup>.

The judiciary, in using its genetic fingerprint in criminal or civil proof, thus avoids problems arising from traditional means, especially when mixing physical materials such as mixing of vaginal secretions in rape crimes, as well as mixing the victim's blood with the perpetrator's blood. The function of fingerprinting genetic technique makes the analyzing of the genetic map easier and the possibility of keeping it until it is needed.

It is required for the genetic fingerprinting a small sample of tissue that can be extracted from DNA, whether the sample is from blood or from sperm, or some of the skin under the nails, hairs or human bones<sup>18</sup>.

The genetic fingerprint is of good importance in civil or criminal proof compared to other techniques and evidence in terms of probation and credibility, as well as its ability to withstand and address various natural and human factors that affect the rest of the other proofs by removing and erasing the effect for good and all.

The genetic fingerprint helps in making judicial judgments for personal statuses, especially in cases of proof of lineage due to their accuracy and high credibility in the results that appear from the analysis.

The Algerian judiciary has depended on the DNA analysis system in descent cases as the easiest way to access influential and productive evidence in the conflict rather than relying on witness statements, investigation results, clues, and traditional physical evidence<sup>19</sup>.

This prompted the Algerian legislator to issue laws on the genetic fingerprinting technique and its use in the identity identification field, thus developing a solution to the issue of the legality of the use to proof the genetic fingerprint.

### **The second thesis: Authenticity of genetic fingerprinting in proof of lineage**

The genetic fingerprint is a new discovery that has now become a real and a concrete reality that has imposed itself and the genetic fingerprint has proven its effectiveness as evidence in many cases of proving lineage to the point of definitively if it is carried out in accordance with the procedures and controls established by law, because it is expressed by its stability at first, and secondly the contrast between individuals, except for identical twins.

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<sup>17</sup> - Bandar bin Fahd Al-Suwailem, Genetic Fingerprint and its Impact on Lineage, Journal of Justice, Issue 37, College of Sharia, Imam Muhammad bin Masoud Islamic University, Riyadh, Saudi Arabia, Muharram 1429, p. 93.

<sup>18</sup> - Abu Al-Wafa Muhammad Abu Al-Wafa Ibrahim, the extent of the authenticity of the genetic fingerprint in criminal proof in descriptive law and Islamic jurisprudence, Genetic Engineering Conference, Arab Emirates University, Al Ain Hotel from 05 to 07 May 2002, published in the proceedings of the conference, p. 691.

<sup>19</sup> - Safaa Adel Sami, Authenticity of the genetic fingerprint in criminal proof, 01, Zain Human Rights Publications, Lebanon, 2012, p. 86.



In this research, we will address the authenticity of the genetic fingerprint through absolute and relative authenticity, as well as the position of the Algerian legislator on this.

### **The first requirement: absolute pilgrimage**

Humans are unique in a special genetic composition within each of the cells of his body, where no one in the world participates in it at all, so this combination is called the genetic fingerprint, and for that reason it is scientifically a method that is strongly wrong in verifying the lineage of the person and his identity and attaching the lineage of children to parents.

Since the problem of proving lineage has become one of the problems in social that the courtrooms are risting with, and it has become a concern for judiciary and the jurisprudence, so it has become imperative for judges to resort to it practically to sever the disputes and rivalries as a result of their credibility, and its argument, which has become absolute.

Perhaps the confirmed specificity of ADN technology appears in the isolation of each person with a genetic pattern that is distinguished from others, as the DNA similarity of one person with another person can only occur once every 86 billion cases, no matter how large the similarity rate is, and if the population of the globe does not exceed 08 people, it can be said that the similarity rate is completely non-existent, and the coincidence does not occur until hundreds of centuries, in the event that experts examine several genetic foci of the person<sup>20</sup>.

This confirms pure authentic of the genetic fingerprint, by taking it from any human residues tissues or liquid, in addition to its resistance to degradation and rot factors, and various climatic factors of heat, cold or humidity, and for long periods, and the footprint can be obtained from ancient and modern effects<sup>21</sup>.

Thus, the judiciary and jurisprudence, admitted the important role played by the genetic fingerprint in proving the lineage, because it is considered a decisive scientific tool, based on the results of DNA analysis, which reaches 100%, which made it gain the confidence of the competent people, led by judges, as well as many civil and criminal legislations that it has come to take as an argument in proving lineage, proving crimes and convicting criminals.

And if the proof of lineage in the Shariah is done in the following ways, namely: bedding, evidence, entitlement, and qiyafa, and modern Islamic jurisprudence has relied on the resulting genetic signs by analyzing laboratory blood in proving lineage<sup>22</sup> and considered it one of the evidence.

It is certain that knowing the person and identifying him accurately and conclusively is important so that he can be distinguished from others, in proof and genetic fingerprinting performs

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<sup>20</sup> - Tawfiq Soltani, Memorandum for obtaining a master's degree, Faculty of Law and Political Science, Department of Legal Sciences, Al-Haj Belkhdher University, Batna, 2011-2012, p. 149.

<sup>21</sup> - Same reference, same page.

<sup>22</sup> - Nasr Lotfy, Proof of Descent by Genetic Fingerprint, Al-Hudaya Magazine, Issue 289, Rabi Al-Awwal 1423, Kuwait, pp. 14-20.



the purpose in the easiest and the best ways, where the identity of the individual is determined by choosing small parts of his body, and there are many cases that are used definitively to determine the identities of people, including but not limited to.

### **Section I: War and Disaster Situations**

Technologists use the genetic fingerprint to identify the dead in cases of mass disasters such as wars, explosions, earthquakes and aircraft accidents, as they enable the accurate identification of pieces and bodies<sup>23</sup>, and through this method, people are identified if they cannot be identified by their features.

### **Section II: Cases of Prisoners and Missing Persons**

Genetic fingerprinting can be useful in identifying prisoners and missing persons whose features have changed due to the length of detention or loss. Their families and families can verify their identities and remove their suspicions using this modern technology that is successful in such cases<sup>24</sup>.

### **Section III: Cases of lost or abducted children**

Investigators and experts resort to the genetic fingerprint in identifying the abducted, amnesic and insatiable children, as well as births in IVF, as well as when births in hospitals are mixed.

Also, in cases and problems related to nationality, and identifying the impersonators of others<sup>25</sup>.

Many historical mysteries have been revealed and solved by identifying people in many complex issues, including solving the mystery related to the fate of the tsarist family in Russia in 1993, through the remains of bones discovered in a pit, revealing the identity of the Russian Tsar Nicolas II, who was executed with his family and buried in the forest of Ekaterinburg on the night of 17-16/07/1918<sup>26</sup>.

This shows the dependability of the fingerprint and its results in revealing identity regardless the passage of the long years and the polluting and successive weather conditions, thanks to which many historical puzzles have been dissolved, and due to their absolute authenticity, the United States has adopted it as a means of proving identity, both in civil or criminal subjects since the eighties of the last century<sup>27</sup>, in the recent period, the Algerian judiciary adopted a law that is consistent with the many cases witnessed by the courts on proving lineage.

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<sup>23</sup> - Khalifa Abdul Maqsood Al-Zayed, History and circumstances of the discovery of the genetic fingerprint in character identification, Arab Journal for Security Studies and Training, Naif University for Security Sciences, No. 43, 2007, p. 22.

<sup>24</sup> - Sah Rakul Mustafa Ahmed, Genetic Fingerprint and Its Evidence in Proof of Lineage, Legal Books House, Dastat Publishing and Software, Egypt, 2010, p. 92.

<sup>25</sup> - Same reference, p. 92.

<sup>26</sup> - Sah Rakul Mustafa Ahmed, previous *ibid*, p. 93.

<sup>27</sup> - Fathi Zuambi, Genetic Fingerprint and its Authenticity in Evidence, Memorandum for a Master's Degree, Faculty of Law and Administrative Sciences, Al Haj Lakhdar University, Batna, Algeria, 2011-2012, p. 77.



### **The second requirement: the relative authenticity of the genetic fingerprint**

Despite the genetic fingerprint importance in the field of proofing and the recourse of the judiciary to it, this does not give it a conclusive and certainty authenticity according to some jurisprudence. The judge of the subject, although he relies on it in his judgments and decisions, this does not mean that it is released in all aspects, so it remains evidence that can be proven to the contrary, for the reasons that is exposed to which it get lost from the truth and reduce the decisiveness of significance, and therefore its authenticity in proof turns from absoluteness to relativity, and perhaps the reasons for this are what happens during the lifting of the genetic fingerprint from human or laboratory errors<sup>28</sup>, or the occurrence of contaminations to which samples may be exposed.

Therefore, the genetic fingerprint must be raised in accordance with the agreed standards and procedures and be careful while dealing with it to avoid any error that may lose its credibility.

Accordingly, all the necessary techniques and procedures must be taken into account in order for the genetic fingerprint to maintain its inferential value and avoid all human errors that experts and specialists may fall into when lifting biological samples<sup>29</sup>, considering the safety orders that protect the effect.

Some of the factors that decrease the credibility of the genetic fingerprint are some miscalculations that may occur in laboratories during the conduct of biological analysis, which guides to the corruption or damage of the sample, as well as the failure in entering data related to evidence, whether by changing or deleting the data, which makes the fingerprint lose its value as physical evidence.

Human error plays a significant role in convicting and sentencing many people despite their innocence<sup>30</sup>, or acquitting others despite their criminal behavior, and courts are full of such cases in which conviction or acquitted for a mistake in sampling, or analysis, and failure to respect the obligatory procedures.

### **The third requirement: the position of the Algerian legislator on the genetic fingerprint**

In the Algerian Family Code<sup>31</sup>, the Algerian legislator used the term evidence, which corresponds to the term "Preuve" in the French text, and the evidence has a special meaning that means in the field of proof of lineage, testimony without other means of proof, and the proof of

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<sup>28</sup> - Yacoub Tayseer Yacoub Naji, Genetic Fingerprint Authenticity, Master's Degree, Faculty of Law and Political Science, Moulay Al-Taher University, Saida, Algeria, 2016, p. 94.

<sup>29</sup> - Same reference, p95.

<sup>30</sup> - Zanat Mohammed Al-Shenawi, Genetic Footprint and Its Authenticity In Proof, D.T., Cairo, Egypt, 2011, P. 85.

<sup>31</sup> - Article 40 of the Algerian Family Code No. 84/11 of 09 June 1984, containing the Family Code, No. 42, 1984, as amended and complemented by Order 05/02 of February 27, 2005, states that: "The descent shall be established by a valid marriage, confirmation, evidence or the sake of suspicion, or by any marriage that has been dissolved after entry in accordance with article 32-33-34 of this Code."



this was applied judicially before the amendment of 2005, but after the amendment of the Algerian Family Code under Order 05/02, the evidence has become a general concept, so the Algerian legislator's position on the genetic fingerprinting had to be discussed as a modern scientific method in proving the lineage before and after the change of the Family Code of 2005.

### **Section I: The position of the Algerian legislator on the genetic fingerprint before and after the 2005 amendment**

It is certainly that in no case can the judge of family affairs decide the issue of proving lineage by scientific methods except by resorting to consulting specialists and experts in the field of biology to reach scientific and accurate results<sup>32</sup>, because this technique is one of the experiences that the judge can decide on except under their guidance.

In many cases, the Algerian judiciary has resorted to genetic fingerprinting, but the Supreme Court automatically raised this adoption as an excess of authority in its decision issued on 15/06/1999, as the blood test was rejected by a medical expert who relied as evidence of proof of descent by the Supreme Court in its decision, and this refusal was based on the fact that proof of lineage was specified in Article 40 of the Family Code with fixed rules and specific controls, and among these rules was not the analysis of blood that the judges went to the subject went, and this is evidence that they exceeded their governing authority to the legislative with which the contested decision must be reversed And refer it to the same council<sup>33</sup>.

It is worth mentioning that the court in this decision based its rejection on the interpretation of the mentioned article of the Family Code, which mentions the evidence that was interpreted on the special meaning, which is the testimony of witnesses.

The evidence was surrounded by the Algerian legislator with many guarantees, including the imposition of severe penalties for the crime of perjury<sup>34</sup>.

It should be noted that proving lineage in Algerian law can only be constructively on a valid or corrupt marriage, and therefore it can be proven if it results from an illegitimate and illegal relationship except for attributing to his mother.

### **Section II: The position of the Algerian legislator on the genetic fingerprint after the 2005 amendment**

The Islamic Fiqh Assembly of the Islamic World League was a context in taking scientific methods as a means of proving lineage, and it stated this at its sixteenth session held in Mecca. However, this proposal was not taken by the Algerian legislator in Law No. 84/11, which did not provide for scientific methods as a means of proving lineage, content with the traditional methods

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<sup>32</sup> - Mahmoud Tawfiq Iskandar, *Al-Khabar Judicial*, Dar Houma, Algeria, vol. 2002, p. 37.

<sup>33</sup> - Decision issued on 15/06/1999 File No. 222674, *Judicial Jurisprudence of the Personal Status Chamber*, Special No., p. 88.

<sup>34</sup> - Article 235 of the Algerian Penal Code states that: "Anyone who falsely testifies in civil or administrative subjects shall be punished by imprisonment from two to five years, and a fine of 500 to 2000 DZD."



prescribed in Islamic law, which was provided for by Article 40 of the Family Code, in addition to the difference and jurisprudential controversy that arose about the introduction of this modern scientific method between jurisprudence, the judiciary and even legislation.

However, after amending the Family Code by Order No. 05/02, it became clear to what extent the Algerian legislator was affected by biological scientific development in line with the technological development that resulted from the use of modern scientific techniques in proving lineage. In order to this, the Algerian legislator included the scientific party among the means of proof in amending the Family Code under Order No. 05/02 in the second period of the aforementioned Article 40<sup>35</sup>.

However, he simply referred to scientific methods without specifying what was meant by them, or mentioning their multiple forms, knowing that the field of scientific methods is wide, including what is definical, such as genetic fingerprinting, and what is the suspicion of proof.

Based on what was approved by the second paragraph of the Family Law for the judge in the field of diligence in matters of proof of lineage and the choice of appropriate scientific means, and therefore the Algerian legislator adopted the genetic fingerprint in an implicit way, which is one of the known scientific means in proving lineage, in addition to the fact that most of the comparative legislation such as French law was taken not shortly.

The fact of the situation shows the function of the genetic fingerprint in the Algerian civil and criminal judiciary, as it is no longer just a test conducted in scientific laboratories, but it has become today a tangible reality from most courts, which called for its legalization in special texts, and this is what Algeria turned to in issuing Law 16/03, even if this law comes late, but it has adjusted the legislative vacuum in the field of proof by modern scientific methods, as it developed the most necessary rules governing the work of this technology, as well as the most important foundations and principles on which this law is based, which is divided into five chapters, where the first chapter was entitled introductory provisions, and the second chapter is entitled on the conditions and methods of using Genetic fingerprinting, while the third and fourth chapters are devoted to talking about the central attract of fingerprints, and the way to keep them. The fifth chapter was on the transitional and final provisions<sup>36</sup>.

Thus, the Algerian legislator has filled the legal vacuum and the legislative gap by issuing this law on genetic fingerprinting and ended legal problems, especially for those who have the right to request the analysis by virtue of the fact that it infringes on personal freedom, which is one of the constitutionally protected principles, so he added the work and judicial recourse to the genetic fingerprint in the places of legal proof.

<sup>35</sup> - Article 40 states in its second paragraph that: "... The judge may resort to scientific methods to prove lineage."

<sup>36</sup> - Yacoub Tayseer Yacoub Naji, last reference, p119-120.



## Conclusion:

At the end of this study, we understood that the discover of the genetic fingerprint is one of the most powerful scientific that has been reached by modern science, and it has been used in several areas and solved many problems and puzzles that traditional means have been unable to do, due to the accuracy of this technique in determining personal identity with extreme accuracy.

It was adopted by the Algerian legislator as evidence of civil and criminal evidence by promulgating a law on the function of fingerprinting genetic in judicial proceedings and the identification of a human being.

And connected with the above, we deduce some results from the subject of genetic fingerprinting:

- The genetic fingerprint is considered one of the most errorless and important modern scientific evidence brought by modern scientific and technical development, as it has proven its usefulness in the definity of proof and among various other scientific evidences.
- Despite the multiplicity of sources of genetic fingerprinting, it was characterized by persistence and resistance to external factors, and its human resources granted it all the guarantees and protection prescribed for the human body and its sanctity.
- The Algerian legislator kept pace with scientific and technological evolution in the department of scientific evidence, after the recent changes of the Family Law, and allowed the judiciary to act on the genetic fingerprint explicitly during Special Law No. 16/03 on genetic fingerprinting.
- Law No. 16/03 on the genetic fingerprint included some deficiencies, as it came short and was not sufficiently detailed in the process of using the genetic fingerprinting technique.
- The Algerian legislator admitted that it is not allowable to use the genetic fingerprint in the case of make sure the lineage by the known legal methods.
- The Algerian legislator's promulgation of Law No. 16/03 was a pioneer at the regional level in adopting the genetic fingerprint, thus having the legal basis and legitimacy to the judiciary and the elements of judicial control in the use of the genetic fingerprint in civil proof.

In conclusion, in appreciation of the above, we decided to put forward some recommendations and directives that would lend a hand to workers in the legal and judicial specialties through field practices in the field of proof, especially civil proof related to proof of lineage.

- The Algerian legislator must support Law No. 16/03 on the use of the genetic fingerprint with the detailed regulatory texts on how to apply its articles.



- The need to tighten and monitor criminal judgments in all matters related to respect for the rights of individuals in general, taking into account the protection of genetic concerns in particular, in accordance with internal texts and international covenants.
- Work on developing special accurate mechanisms for preserving and storing genetic fingerprint samples, while tightening the procedures and procedures for all steps of handling with the genetic fingerprint.
- The need to conclude agreements with scientific research centers and medical and biological universities and their involvement in the field of forensic medicine and biology in general, and with regard to the genetic footprint in specific.
- The need to commit intelligence to analyze the genetic fingerprint in favor of justice, preserve it and store it to reach the principle of neutrality from the executive branch.