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Medical Examination Before Marriage -A Comparative Study-

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Abstract:

The topic of medical examination before marriage is a contemporary issue that emerged in the 1980s. Given the recent health and social challenges, along with the significant advancements in the field of genomics, this topic has resurfaced and has been adopted in many Arab countries as a prerequisite for marriage contracts. There is a debate regarding its obligatory nature, with some viewing it as a requirement and others as a preventive measure. Among scholars, opinions vary, with some permitting it, others mandating it, and some opposing it. This disagreement arises from the evidence presented by each side and the pros and cons associated with these medical examinations. It should be noted that the requirement for medical examination before marriage is not intended to impose restrictions or hardships; rather, it aims to positively impact the preservation of people's interests at various levels. One of its primary objectives is the protection of life and lineage, alongside the objective of preserving wealth.

Keywords: medical examination, marriage, rulings, objectives.

Introduction:

Praise be to God, and peace and blessings be upon the Messenger of God, his family, companions, and those who follow him.

The topic of medical examination before marriage is one of the important contemporary developments in family jurisprudence. It has engaged both

religious and legal scholars due to its adoption in most Arab countries, where it has become a legal and religious requirement for marriage contracts. This importance arises from the scientific and social impact of recent medical discoveries and advancements in the field of genomics, which have significantly influenced various areas, particularly family relationships and marriage. However, a notable aspect of the medical examination before marriage is the sharp disagreement among scholars regarding its legal and religious implications. Some permit it, others mandate it as a condition for marriage, while others oppose it, arguing that it adds to the contract something that is not inherent to it. This disagreement leads to the research question:

-Medical Examination Before Marriage - A Comparative Study

1. Importance of the Research and the Reason for Its Choice:

The medical examination before marriage is a contemporary issue in family jurisprudence. My interest in researching this topic stems from the existing disagreements among contemporary scholars and the lack of clarity regarding the points of contention. I chose to focus on clarifying these disputes and identifying the prevailing opinion on the matter, while also addressing the purposive implications of the medical examination based on its benefits and drawbacks.

2. Scope of the Research:

This research is a comparative study of the opinions of scholars regarding the medical examination before marriage. It also examines the laws and regulations related to this issue in key Arab countries.

3. Research Problem:

What is meant by the medical examination before marriage?

There has been significant debate at both the religious and legal levels regarding this topic. What are the rulings of religious law and legal frameworks concerning these examinations? This debate has led to conclusions about the impacts of these examinations, highlighting both advantages and disadvantages. What are the positives and negatives of medical examinations before marriage?

4. Objectives of the Research:

- To clarify the points of contention regarding the medical examination before marriage among scholars and to present the prevailing opinion on the matter.

- To outline the purposive implications of adopting this examination in marriage contracts.
- To identify the drawbacks and benefits of the medical examination before marriage.

5. Previous Studies:

Numerous studies have been conducted on medical examinations before marriage. Among them, for example:

“Medical Examination Before Marriage in Islamic Jurisprudence” by Musleh Abdul-Hai Al-Najjar, published in the Journal of King Saud University, Educational Sciences and Islamic Studies, 1425 AH/2004 AD. However, this study is somewhat outdated as a contemporary analysis.

Another work is “The Medical Examination Before Marriage in Algerian Family Law” by Abdel Aziz Yahya, published in the Journal of Human Sciences, University of Mentouri Constantine, 03/06/2018. This research was very brief, focusing solely on Article 7 bis of Order 05/02 issued on 27/02/2005, which amends Law 84/11 issued on 09/06/1984 concerning family law.

In contrast, my research provides a comprehensive comparison between the opinions of scholars and the legal regulations of family laws in Arab countries. Additionally, it addresses the impact of medical examinations before marriage on achieving the objectives of Sharia, which constitutes an important contribution to the existing body of knowledge.

6. Research Methodology:

I adopted a descriptive methodology to explore the details of the topic and define it, alongside a comparative approach to analyze the jurisprudential and legal opinions, as well as the effects concerning their pros and cons.

7. Research Plan:

The research plan is organized into an introduction, four main sections, and a conclusion.

- **Introduction:** This includes the importance of the research, the reason for its selection, the problem, objectives, previous studies, research methodology, and plan.
- **Section One:** The concept of medical examination before marriage.
- **Section Two:** The religious and legal foundation of medical examination before marriage.
- **Section Three:** The impact of medical examination before marriage on achieving the objectives of Sharia.
- **Section Four:** The positives and negatives of medical examination before marriage.
- **Conclusion:** Research findings.

Subsection One: Linguistic and Technical Definition of Medical Examination Before Marriage

First: The linguistic definition of medical examination before marriage:

The phrase “medical examination before marriage” consists of the following terms: examination - medical - before - marriage. To clarify its linguistic meaning, we should examine the meanings of each term separately as follows:

- **Examination:** The root of the word includes the letters fā’ (ف) and šād (ص), which convey the idea of searching for something. It is said: “I examined the matter” (فحصت عن الأمر فحصاً). In a narration from Abu Bakr Al-Siddiq (may God be pleased with him), he stated: “...and you will find a people who examined the middle of their heads for hair, so strike what they have examined with the sword,¹” indicating they left it like the examination of quails. Thus, examination implies a search or inspection². When a doctor examines someone, it means they uncover their ailments³.
- **Medical:** Derived from “ṭabb” (طب), which refers to the treatment of body and soul. A man approached the Prophet Muhammad (peace be upon him) and, noticing the seal of prophethood between his shoulders, said: “If you permit me, I will treat it, for I am a physician.” The Prophet replied: “The one who created

¹- Narrated by Malik in Al-Jihad, Chapter on the prohibition of killing women and children during warfare, No. (971).

²- Al-Kulliyat (Dictionary of Terms and Linguistic Differences); Abu Al-Baqa Al-Kafawi: (245).

³- Dictionary of Correct Language; Ahmed Mukhtar Omar: (1/620).

it is its physician,¹” meaning that the creator knows it best, not you². Medicine and physician refer to skilled individuals adept in their knowledge.

- **Before:** Al-Jahiz states: “Before is the opposite of after.”³

- **Marriage:** Linguistically, it refers to “nikah” (نكاح), meaning to unite or bring together⁴. Legally, it is a contract of marriage, which permits enjoyment of the woman⁵ and is defined as the union of a male and female through a lawful contract⁶.

After clarifying the meanings of the compound terms for medical examination before marriage, it is essential to define what constitutes a medical examination before marriage, noting that this term is relatively modern and was not known among early scholars, as it pertains to contemporary issues arising from changes in marriage practices. Further details will be elaborated upon in the relevant section of the research.

Second: Technical Definition of Medical Examination Before Marriage:

The medical examination before marriage refers to laboratory or clinical tests conducted for both the male and female parties intending to marry. These tests are performed prior to the marriage contract to detect any health impediments that may prevent marriage, as well as to assess the possibility of procreation⁷. This ensures that both parties are fully informed and convinced of what they are entering into. Al-Shanqeeti defined it as follows: “The concept of medical examination before marriage includes tests aimed at identifying hereditary, infectious, and sexually transmitted diseases, as well as daily habits that may potentially affect the health of the qualified spouses or the children at the time of childbirth.”⁸

When we examine the types of medical examinations before marriage, we find that they can be categorized as follows:⁹

1. Laboratory Tests for Genetic Diseases:

¹- Narrated by Abu Dawood in Al-Tarajjul, Chapter on Dyeing, No. (4209).

²- Lisan Al-Arab; Ibn Manzur: (1/553).

³- Previous source: (11/536), Al-Sihah; Al-Jawhari: (5/1795).

⁴- Islamic Jurisprudence and its Evidence; Al-Zuhaili: (9/6513).

⁵- Same source.

⁶- Dictionary of Contemporary Arabic; Ahmed Mukhtar Omar: (2/1006).

⁷- Medical Examination Before Marriage - Legal and Practical Study; Ghadayat Safwan Muhammad: (56).

⁸- The Rules of Medical Surgery and Its Consequences; Muhammad Al-Shanqiti: (199).

⁹- See: Pre-Marriage Examination in Islamic Jurisprudence; Muslih Abdul-Hai Al-Najjar, Journal of King Saud University, Educational Sciences and Islamic Studies: 1425 AH / 2004 AD, and see: Pre-Marriage Examination; Muhammad Ali Al-Bar: (22-28).

Various diseases are prevalent in certain communities. Here is a brief overview of some hereditary blood disorders:

- **Sickle Cell Anemia:** A genetic disorder resulting from a change in the structure of the genes responsible for blood formation. It is hereditary and passed from parents to children, and there is currently no cure.

- **Folate-Deficiency Anemia:** This condition arises from a deficiency of the enzyme G6PD found in red blood cells, which is essential for maintaining the integrity of red blood cell walls. Like sickle cell anemia, it is hereditary and can be passed down. Early testing before marriage is recommended for prevention¹.

2. Laboratory Tests for Infectious Diseases:

These tests reveal certain infectious diseases such as viral hepatitis types B or C, cytomegalovirus, syphilis, and malaria. Conducting these tests before marriage is possible, and the doctor provides this information to those wishing to marry, allowing them the choice to proceed or not.

3. Laboratory Tests for Sexually Transmitted Diseases:

Medical examinations before marriage also include testing for sexually transmitted diseases. For example, sperm cell analysis in men can identify issues that may lead to infertility. Additionally, these tests help reduce the spread of sexually transmitted infections through early diagnosis and effective treatment.

Subsection Two: Related and Synonymous Terms for Medical Examination Before Marriage

The term “medical examination before marriage” is the most well-known designation; however, other terms have emerged that reflect the same concept, denoting the medical assessment that occurs prior to marriage. Some of these terms may completely overlap with “medical examination before marriage,” while others may exhibit slight variations depending on the specificity and comprehensiveness of the tests. Nonetheless, they all relate to the verification of

¹- Many countries have sought to emphasize pre-marriage examinations to avoid such deadly diseases. King Fahd bin Abdulaziz Al Saud issued a directive to the Council of Ministers to study expanding the implementation of a Cabinet decision issued on 14/9/1418 AH, which mandates pre-marriage medical examinations in cases where one party is not Saudi, to include cases where both parties are of Saudi nationality. See: To Ensure a Healthy Family: Pre-Marriage Examination for Genetic Diseases; Al-Bahsin Safa, included in the College of Girls' Bulletin, Issue (34) Rajab 1423 AH – September 2002 AD, p. (10), and see the article: The Custodian of the Two Holy Mosques Directs the Study of Expanding the Mandatory Examination for Saudis Before Marriage; Al-Ghazal Adnan, published in Al-Watan newspaper, Issue (433) Thursday, 21 Ramadan 1422 AH.

the health of both spouses before marriage and the well-being of children after marriage. Some of these terms include:

- Medical examination before marriage
- Medical screening tests before marriage
- Genetic testing before marriage
- Genetic counseling before marriage
- Genetic guidance
- Medical consultation and examination before marriage

The meanings of these terms are as follows:

First: Medical Examination Before Marriage:

The term “examination” is synonymous with “test.”¹

Second: Medical Screening Tests Before Marriage:

These are also referred to as medical tests before marriage. They consist of a series of evaluations conducted for individuals preparing for marriage, varying from one country to another. Some countries focus on genetic diseases due to the prevalence of consanguineous marriages, such as those in the Middle East, while others emphasize infectious diseases.

Third: Genetic Testing Before Marriage:

This is also known as genetic screening or analysis before marriage, and it includes pre-marital genetic testing. These modern techniques allow for accurate examination and diagnosis of the couple, helping to ensure safe pregnancies and genetically healthy children in the future while avoiding genetically affected offspring. One researcher² noted that this type of testing may involve one of the following scenarios:

- Determining whether the man, the woman, or both are carriers of a genetic trait that could be passed on to their offspring, with God’s permission.

¹- Basic Arabic Dictionary; A group of prominent linguists; Arab Organization for Culture and Sciences: 378.

²- Pre-Marriage Medical Examination and Contemporary Medical Genetics; Jaradah Lakhdar: (36).

- Identifying whether the man, the woman, or both have a specific genetic disorder, as some genetic diseases may not manifest clearly in adults unless precise clinical and laboratory testing is conducted, which is rarely utilized.

Fourth: Genetic Counseling Before Marriage, Genetic Guidance, and Medical Consultation and Examination Before Marriage:

All of these terms convey similar meanings. Medical consultation is considered one of the essential healthcare services and a fundamental component of pre-marital screening. It provides information and medical advice regarding genetic and infectious diseases and the likelihood of their occurrence for individuals preparing for marriage, assisting them in making informed decisions. This process aims to create a supportive and conducive atmosphere that enables the individuals receiving the consultation to make sound decisions in a context of trust, integration, and privacy¹.

Section Two: The Legal and Shari'ah Foundation of Medical Examination Before Marriage

Subsection One: Medical Examination from a Shari'ah Perspective Between Those Who Mandate and Those Who Oppose

Upon examining the writings of scholars regarding the issues faced by couples and the means to maintain their mental and physical health, we find that this has been a concern for them since ancient times. For instance, they discussed issues such as insanity, impotence, castration, congenital defects, leprosy, and halitosis, among others, which led to rulings including the annulment of the marriage contract if either spouse suffered from any of these conditions.

Over time, with the evolution of human concepts and the increasing number of social problems, new issues and cases have emerged that require attention. Among these issues is the development of the concept of heredity and the discovery of infectious diseases², which necessitated what is now referred to as medical examination before marriage, aimed at ensuring the health of both spouses and establishing a family with optimal health security. Scholars and researchers in the fields of jurisprudence and objectives have divided into two main camps regarding these medical examinations before marriage: supporters and opponents. Each of these camps further subdivides into factions, which will be addressed through the opinions of scholars regarding pre-marital

¹- Guide to Healthy Marriage Program; Ministry of Health, Kingdom of Saudi Arabia, 1443 AH - 2021 AD: (53).

²- See Pre-Marriage Examination; Abdul Rahman Al-Nafisa, Journal of Contemporary Jurisprudential Research, Issue: 62 - Year 1425 AH: (304).

examinations, along with their evidence, discussions, and the preferred opinion as follows:

First: Opinions of Scholars Supporting Medical Examination Before Marriage and Their Evidence¹

The opinions of scholars who support the case for medical examination before marriage can be divided into two categories: those who permit it and those who mandate it, as follows:

First Category: Those Who Permitted Medical Examination Before Marriage

Representatives of this view include Professor Dr. Muhammad Othman Shubair, Dr. Muhammad Ali Al-Bar, Lotfi Nasr, and others². Proponents of this category believe that the way to determine whether one of the spouses has a disease is through conducting medical examinations before marriage. They argue that this does not contradict Islamic law or the objectives of marriage in Islam, as marriages between healthy individuals tend to last longer than those involving sick individuals. It can be organized in such a way that it does not cause harm to either party. Dr. Shubair suggests that the state should provide the necessary equipment for these examinations free of charge, starting from the age of fifteen, and that individuals should receive a medical certificate indicating their health status³. Dr. Muhammad Ali Al-Bar notes that, in summary, the issue of medical examination before marriage concerning hereditary diseases should not be obligatory⁴.

Evidence for the Permissibility of Medical Examination Before Marriage:

Proponents of this view cited both textual and rational evidence as follows:

1. Hadiths on Contagion and Disease Transmission:

They referenced the Prophet Muhammad's (peace be upon him) sayings regarding contagion, such as: "There is no contagion, no ill omen, no bad omen,

¹- See: Pre-Marriage Examination in Islamic Jurisprudence; Muslih Abdul-Hai Al-Najjar: (1147 and beyond).

²- See: Islam's Position on Genetic Diseases; Muhammad Shubeir, in Al-Hikma (210), and Pre-Marriage Examination and Genetic Counseling; Muhammad Ali Al-Bar: (35), and Pre-Marriage Medical Examination: Is It Mandatory by Governments or Optional? in Al-Hidaya: (19).

³- Islam's Position on Genetic Diseases; Muhammad Osman Shubeir: (210).

⁴- Pre-Marriage Examination and Genetic Counseling; Muhammad Ali Al-Bar: (35).

and flee from the leper as you would flee from a lion.¹” He also said: “A sick person should not be brought to a healthy person.²” These hadiths warn against contagion, and the only way to know and avoid it is through medical examination.

2. Hadiths Encouraging Marriage to Fertile Women:

There are narrations that discourage marrying sterile women. For example, Ma’qil ibn Yasar reported that a man came to the Prophet (peace be upon him) and said: “I have found a woman of good lineage and beauty, but she does not give birth. Should I marry her?” The Prophet replied, “No.” The man returned to the Prophet twice, and each time he was told not to marry her. Finally, the Prophet said: “Marry those who are loving and fertile, for I will boast of your great numbers on the Day of Resurrection.”³ Islam encourages marriage and emphasizes the importance of choosing the best and most suitable partners to achieve the objective of marriage, which is to preserve and perpetuate lineage. Thus, it has legislated rules that ensure neither spouse is afflicted with infectious or hereditary diseases to prevent the transmission of such conditions to their children. The means of knowing whether one of the spouses has a disease is through conducting pre-marital examinations.

3. The Principle of “No Harm and No Harassment”⁴

The relevance of this principle to the permissibility of medical examination before marriage lies in the potential existence of serious diseases that could affect the spouses. Entering into marriage without knowledge of such infectious or hereditary diseases poses a significant risk to the family unit. If it is known that either the man or the woman has a chronic, dangerous, or hereditary disease, they should refrain from marrying each other to prevent harm⁵.

4. The Principle of “Prevention is Better than Cure”:

Medical examination before marriage serves as a preventive measure against health issues and protects the family from hereditary and infectious diseases.

¹- Narrated by Al-Bukhari in Medicine, Chapter on Leprosy, No. (5769).

²- Narrated by Al-Bukhari in Medicine, Chapter on No Harm, No. (5830).

³- Narrated by Abu Dawood in Marriage, Chapter on the Prohibition of Marrying Women Who Have Not Given Birth, No. (2052), through Ma’qil bin Yasar; this is a hadith of authentic chain: this hadith is of good chain, see: Al-Badr Al-Munir in the Verification of Hadiths and Narrations Occurring in the Great Commentary of Ibn Al-Mulaqqin: (7/495-496).

⁴- Al-Ashbah wa Al-Nazair in the Rules and Branches of Shafi’i Jurisprudence; Jalal Al-Din Al-Suyuti: (173), and the origin of this rule is the hadith narrated by Malik in Al-Muwatta in matters of Judgments, Chapter on Judgments in Facilities: (1435).

⁵- Pre-Marriage Examination; Muslih Abdul-Hai Al-Najjar: (1151).

Additionally, it offers reassurance regarding the health of those wishing to marry and ensures they are free from diseases, while also providing medical advice and recommendations for prevention or treatment in such cases¹.

Second Category: Those Who Advocate for the Mandatory Medical Examination Before Marriage

Representatives of this view include Dr. Muhammad bin Ahmad Al-Salih, Dr. Walid bin Mosaad Al-Tabtabai, Dr. Wajih Zain Al-Abidin, Okasha Al-Taybi, Dr. Mohsen bin Ali Al-Hazmi, Sheikh Muhammad bin Ibrahim Shaqra, and others².

Evidence for the Mandatory Medical Examination Before Marriage:

These scholars provided evidence from the Sunnah and foundational legal principles that support and, in their view, necessitate medical examination before marriage, as follows:

They referenced the previously mentioned hadiths reported by Al-Bukhari in his Sahih, including the narration from Abu Huraira where the Prophet (peace be upon him) said: “Flee from the leper as you would flee from a lion,” as well as another hadith: “Do not bring a sick person to a healthy one.”³ Sheikh Al-Istambuli commented on these hadiths, stating: “These two authentic hadiths indicate caution against contagion. Most modern governments have enacted laws mandating medical examination before marriage, and Islam was the pioneer in this directive. It is the religious duty of each spouse not to enter into marriage if they are afflicted with a contagious disease. It has been said in a sound hadith: ‘None of you truly believes until he loves for his brother what he loves for himself.’⁴”

The hadith of the Prophet (peace be upon him): “There should be neither harm nor reciprocating harm.”⁵ Dr. Wajih Zain Al-Abidin explains: “I understand this to mean that to ensure the well-being of a good woman and to prevent harm to her and to the man, it is permissible, and indeed necessary, within Islamic law,

¹- Pre-Marriage Examination Prevents Health Issues; Wael Shaheen, in Islamic Economic Journal (65), Issue (163) Jumada Al-Akhira 1415 AH – December 1994 AD.

²- Islam's Approach to Taking Precautions for Establishing a Sound Family; Muhammad Al-Salih, in Security and Life magazine Issue (226). The Role of Marriage in Preventing AIDS; Walid Al-Tabtabai, in An Islamic Perspective on Social Problems of AIDS (292), held in Kuwait 1414 AH. Ideal Marriage; Al-Taybi, Okasha (93). Marital Life; Suleiman Al-Shahri (74), An Inevitable Necessity, Abdul Latif Arsan, in Security and Life magazine (74), Issue (199) Dhul-Hijjah 1419 AH.

³- Previously referenced.

⁴- Narrated by Al-Bukhari in Faith, Chapter on Loving for One's Brother What One Loves for Himself, No. (13).

⁵- Previously referenced.

to conduct examinations of the spouses before marriage, especially to identify fertile women and to screen men for infectious diseases, as well as checking for issues of chastity, infertility, or insanity. There are essential tests that both parties must undergo before marriage, with the clear objective of reassurance and ensuring everything is in order to identify weaknesses and address them.¹

Principle: “The Actions of the Imam Regarding the Subjects Are Based on Public Interest”²

The relevance of this principle to the mandatory nature of pre-marital examinations lies in the fact that medical screening before marriage serves as an interest that the authority should oversee. The concern has shifted from a specific interest of the two individuals to a general interest for the family and society. Preventing marriage until after the medical examination and confirming the absence of serious diseases constitutes a clear public interest aimed at preventing corruption. This protects the spouses from transmitting infectious diseases, such as sexually transmitted infections, immune deficiency diseases, and hereditary conditions. It also ensures the community is safeguarded from a generation that may be ill or disabled, which would burden the nation with costs and special care without yielding a healthy offspring. However, this interest should be regulated by the following Shari’ah principles:

- The interest must align with the objectives of Islamic law.
- The interest must be public rather than private, benefiting the majority of people.
- This interest should not contradict any text from the Qur’an, Sunnah, or consensus³.

Thus, we find that the overwhelming majority of contemporary scholars recognize the importance of medical examination before marriage, with some considering it a requirement. We have presented numerous pieces of evidence in support of this view, among others⁴.

Second Category: Those Who Oppose Medical Examination Before Marriage⁵

¹- The Bride's Gift; Mahmoud Al-Istanbuli: (55).

²- Jurisprudential Rules; Ali bin Ahmad Al-Nadwi: (123).

³- Pre-Marriage Examination; Muslih Abdul-Hai Al-Najjar: (1153).

⁴- Previous reference.

⁵- See: Contemporary Medical Issues in Jurisprudence; Ali Muhyiddin Al-Qaradaghi, Ali Yusuf Al-Mohammadi: (283 and beyond).

The issue raised by scholars concerning this matter is whether the state can legislate a requirement for individuals wishing to marry to undergo medical examinations before marriage, and impose consequences for failing to comply, such as annulment or non-registration. The responses can be divided into two sections: the first section supports permissibility (previously mentioned), and the second section is as follows:

A group, including Sheikh Abdulaziz bin Baz (may Allah have mercy on him), Dr. Abdul Karim Zidan, Dr. Muhammad Rafat Osman, Dr. Muhammad Abdul Ghafar Al-Sharif, and others, argue against this requirement, citing the following evidence:

1. Nature of the Marriage Contract:

The marriage contract is not a new contract that requires additional conditions for its validity; rather, it is a contract detailed by Islamic law regarding its pillars and conditions. It has its specificities, and the law has surrounded it with additional care and attention. Forcing the parties to include this condition (medical examination) is contrary to what is established by Shari'ah, rendering this condition invalid, as it falls under the Prophet's statement: "Whoever stipulates a condition that is not in the Book of Allah, it is null and void."¹

2. Lack of Evidence for Health Requirements:

There is no evidence in the Qur'an, Sunnah, or the sayings of previous scholars that stipulates the necessity of health for the validity of marriage. There is also no requirement that marriage must lead to procreation, as seen with elderly individuals or women past childbearing age, who are permitted to marry without the intent of having children. The Shari'ah conditions following the contract include that the husband should be of good faith and character, without a stipulation of being free from illness, as the Prophet (peace be upon him) said: "If a man comes to you whose religion and character you approve, marry him..."²

3. Authority of the Ruler:

¹- Narrated by Al-Bukhari in Sales, Chapter on Buying and Selling with Women, No. (2195).

²- Narrated by Al-Tirmidhi in Marriage from the Messenger of Allah (peace be upon him), Chapter on What to Do When One Whose Religion You Approve Comes to You, No. (1108), through Abu Hatim Al-Muzani, and he said: This is a good strange hadith. Al-Mubarakfuri said: Its chain includes Abdullah bin Muslim bin Hermuz, who is weak, but it is supported by the hadith of Abu Huraira mentioned earlier. See Tuhfat Al-Ahwadhi, Explanation of Sunan Al-Tirmidhi: (2/169).

The actions of the ruler, especially in making what is permissible obligatory, are valid only if there is a clear public interest, in line with the legal principle: “The actions of the Imam regarding the subjects are based on public interest.”¹

Weighing:²

Contemporary researchers specializing in this matter have detailed the issue of medical examination before marriage as follows:

- It is not permissible to force individuals to undergo genetic testing; rather, the choice should be left to personal freedom while raising awareness of its importance.
- It is permissible for the state to issue a binding decision requiring individuals wishing to marry to undergo routine medical examinations under two conditions:
 - **First Condition:** This should apply to serious and contagious diseases, such as hepatitis and AIDS, with a specialized committee to identify these dangerous infectious diseases without unnecessary expansion, based on the principle that “necessities and urgent needs are to be evaluated as such.”
 - **Second Condition:** The penalty for failing to undergo a medical examination should not be the annulment of the marriage contract or the negation of legal effects of marriage, but rather a different penalty, such as a financial fine or similar.

The rationale for distinguishing between genetic testing and routine medical examinations for infectious diseases is that genetic testing can lead to significant harms at the individual, family, and community levels, as previously mentioned. Furthermore, there are undisclosed secrets that require further study and analysis. In contrast, neglecting serious infectious diseases like hepatitis and AIDS can also lead to substantial harms, as noted. Dr. Qaradawi adds: “I believe that by this synthesis, we have gathered the best of both opinions and combined the evidence from both sides”³.

Subsection Two: Medical Examination from a Legal Perspective

¹- For this rule, see: Al-Ashbah wa Al-Nazair by Al-Suyuti, p. 121, and Al-Mansoor by Al-Zarkashi (1/309).

²- Contemporary Medical Issues in Jurisprudence; Ali Muhyiddin Al-Qaradaghi, Ali Yusuf Al-Mohammadi: (283 and beyond).

³- Previous reference.

The legal ruling regarding medical examination before marriage is determined by the laws and regulations of various countries and governments in this area. Therefore, we will provide an overview of the regulations and rulings regarding medical examination before marriage in Arab countries¹, followed by a discussion of the ruling on pre-marital examination in Algerian family law as follows:

Medical Examination Before Marriage in the Kingdom of Saudi Arabia:

The Ministry of Health, in coordination with the Ministry of Justice, is responsible for establishing marriage officiants to clarify the benefits of pre-marital medical examinations and to require the presentation of a medical examination certificate before the marriage contract is executed.

In the Hashemite Kingdom of Jordan:

The Ministry of Health proposed the issuance of a specific regulation that mandates individuals intending to marry to undergo a medical examination to ensure they are free from HIV, in particular.

The Egyptian Law:

The Egyptian Constitution, in Article 2, emphasizes the necessity of a medical examination before marriage.

in the Kingdom of Morocco:

Married couples are required to provide a medical certificate confirming their absence from infectious diseases and HIV.

In the Personal Status Law of the United Arab Emirates:

Article 27, Section 2, requires a report from a specialized medical committee confirming the absence of infectious diseases as a condition for conducting marriage contracts.

Medical Examination Before Marriage in Algerian Family Law:²

¹- See: Medical Examination Before Marriage and Its Medical, Juridical, and Regulatory Effects, Muhammad Mansour Rabi' Al-Madkhali: (46).

²- See: Pre-Marriage Examination in Algerian Family Law; Abdul Aziz Yahya, published article in Humanities Journal, Issue 49 June 2018, (A/235-242).

The Algerian legislator has adopted the issue of pre-marital medical examination and recognized its legitimacy. Although a draft law for medical examination before marriage was prepared by specialists in the early 1980s, it only came to fruition with amendments in 2005. Thus, it is evident that the law regarding pre-marital medical examination in Algeria has undergone various stages as follows:

First: Introduction of a document called the “Medical Examination Certificate Before Marriage,” without specifying its procedures, methods, or conditions¹.

Second: Issuing a Decree to Specify the Conditions and Procedures for Conducting Medical Examinations Before Marriage in the Amended Law².

It is clear from the provisions of Algerian law governing the medical examination certificate before marriage that its role is purely preventive, aimed at protecting the spouses, children, and society from hereditary or infectious diseases that could hinder their marital duties. If marriage occurs without presenting this certificate, it is not considered invalid but remains valid. However, if a spouse intentionally conceals a disease that is discovered after marriage, the other spouse cannot request divorce based on defects and diseases, as stated in Article 52/2 of the Algerian Family Law. Additionally, a request for annulment may be made due to a mistake regarding a fundamental attribute of the person, according to Articles 81 and 82 of the Algerian Civil Code. The ability to engage in sexual relations is a primary condition for marriage, and concealing reproductive defects such as impotence grants the wife the right to seek divorce, as the consent is considered flawed³.

Section Three: The Impact of Medical Examination Before Marriage on Achieving the Objectives of Shari’ah.

Imam Abu Hamid Al-Ghazali stated that the objective of public interest is to preserve the aims of Shari’ah, and the goal of Shari’ah concerning creation is to protect their religion, souls, intellect, lineage, and property. Everything that involves the preservation of these five essentials is considered beneficial, while anything that jeopardizes them is considered harmful⁴. Undoubtedly, revealing one’s health status and undergoing medical procedures to understand the

¹- Law 84/11 dated June 9, 1984, amended by Order 05/02 dated February 27, 2005.

²- Executive Decree No. 06/154 dated May 11, 2006, which defines the conditions and modalities for applying Article 7 bis of the Family Law.

³- Concise Commentary on Algerian Family Law According to the Latest Amendments Supported by Supreme Court Jurisprudence: Marriage Provisions, Belhaj Arabi, Diwan of University Publications, Algeria, 2012: (1/122).

⁴- See: Disagreement in the Foundations of Jurisprudence, Al-Ghazali: (151).

realities of one's body and that of one's spouse is aligned with the Shari'ah objectives regarding lineage and self-preservation, as well as property. This will be elaborated upon in the following sections:

Subsection One: The Impact of Medical Examination Before Marriage on Preserving Life

Preserving life is one of the five necessities, encompassing the right to life and the safety of the body and its members. Human life is the primary goal to which all essential objectives of Islamic legislation relate, following the preservation of religion. The preservation of life in our noble Shari'ah relies on two main approaches: the preventive approach and the therapeutic approach as follows:

1. Preventive Approach:

Islam does not limit itself to treating diseases; it emphasizes preventive care as well. It has legislated quarantine based on numerous evidences from the Qur'an and Sunnah, such as the Prophet's saying: "Do not bring a sick person to a healthy one,¹" and "There is no contagion, no ill omen, and flee from the leper as you would flee from a lion."² Quarantine is considered a means of safeguarding the soul from potential harm. One of the most significant means of achieving this quarantine is the medical examination before marriage, aimed at protecting lives from the dangers posed by infectious diseases.

Thus, reliance on medical examination is essential for protecting spouses from serious infectious diseases before marriage. These diseases can spread through sexual contact, making it imperative for those intending to marry to undergo medical examinations to safeguard themselves from these ailments.

Furthermore, pre-marital medical examinations help identify potential hereditary diseases that could impact marital life, thereby facilitating preventive measures to minimize their occurrence.

2. Therapeutic Approach:

This approach aims to address and remedy existing harm. Healing can only occur after identifying the illness, which can only be known through medical examination before marriage. Islam has established means to protect life through:

¹- Previously referenced.

²- Previously referenced.

- Permitting Treatment and Healing from Diseases:¹

Seeking treatment is permissible according to evidence from the Qur'an and the noble Sunnah. A person who neglects treatment risks harming themselves, their body, or their relatives, or may transmit a contagious disease to others. As Allah says: "And do not throw yourselves into destruction [by refraining]. And do good; indeed, Allah loves the doers of good" (Surah Al-Baqarah, 195). The Prophet (peace be upon him) also said: "Seek treatment, for Allah has not created a disease without creating a cure for it, except for one disease: old age." Seeking treatment is a legislative means to preserve life, which is a fundamental objective of Islamic law.

Subsection Two: The Impact of Medical Examination Before Marriage on Preserving Lineage²

Islam considers the preservation of lineage as one of the five fundamental objectives and encourages its maintenance. It promotes marriage and the increase of offspring, as evident in Allah's saying: "And Allah made for you from your own selves spouses and made for you from your spouses children and grandchildren and provided for you from the good things. Then will they believe in falsehood and deny the favor of Allah?" (Surah An-Nahl, 76). The Prophet Muhammad (peace be upon him) also encouraged increasing offspring by saying: "Marry those who are loving and fertile, for I will boast of your great numbers on the Day of Resurrection."³

Moreover, it is essential that the offspring be strong, intelligent, and righteous, so they can fulfill the responsibilities of stewardship on earth in the best possible way. The Prophet (peace be upon him) also said: "Choose for your offspring, and marry those of equal status."⁴ This emphasizes the importance of producing healthy children and ensuring their well-being even before birth, through the

¹- See: The Teleological Perspective on the Newly Introduced Pre-Marriage Medical Examination by Order 05-02 Amending the Algerian Family Law; Karim Zainab, Karim Karima, published article in the Legal Studies Journal June 2020, (07/02/100).

²- Narrated by Abu Dawood in Medicine, Chapter on a Man Seeking Treatment, No. (3857), and Al-Tirmidhi in Medicine, Chapter on What Was Said About Medicine and Encouragement Thereof, No. (2038), through Usama bin Sharik, and he said: This is a good and authentic hadith.

³- See: The Teleological Perspective on the Newly Introduced Pre-Marriage Medical Examination by Order 05-02 Amending the Algerian Family Law*; Karim Zainab, Karim Karima, published article in the Legal Studies Journal June 2020, (07/02/102).

⁴- Previously referenced.

careful selection of a spouse who is free from diseases that could negatively impact the offspring's health¹.

The impact of medical examination before marriage on preserving lineage can be summarized in the following points:

- Medical examinations help determine the couple's ability to conceive by identifying any diseases that may prevent reproduction.
- These examinations inform prospective spouses about potential hereditary diseases that could manifest in their offspring, thereby expanding their options regarding childbearing, whether to have children or to consider the viability of their marriage. Each party can ascertain the other's ability to conceive.
- There are medical tests that can reveal the presence of diseases in one spouse that, while not preventing reproduction, could be passed on to the children. These hereditary diseases pose a risk to the offspring's health. Such examinations allow for genetic counseling for the couple to assess their future conditions and evaluate whether to continue the marriage to protect the future offspring from hereditary diseases and avoid giving birth to disabled or malformed children, who would impose burdens on their families.

Thus, it is evident that pre-marital medical examinations are a crucial means of ensuring the health of both spouses and their children, thereby fulfilling the objectives of preserving life and lineage, which are closely tied to the objective of preserving wealth.

Section Four: Advantages and Disadvantages of Medical Examination Before Marriage

Through the research, it has become evident that there is a medical, jurisprudential, and legal disagreement regarding the necessity of medical examinations before marriage, with supporters, opponents, and those who place conditions on it. The impact of this disagreement extends to discussing the positives and negatives of pre-marital medical examinations and their implications for the spouses, children, and society in general. These are outlined as follows:

¹- Narrated by Ibn Majah in Marriage, Chapter on Suitable Matches, No. (2044) through Aisha. This hadith is not accepted by most scholars; see: Nasb Al-Rayah for the Hadiths of Guidance; Al-Zailai: (3/197), and The Classified and Annotated Musnad, Bashir Awad Ma'ruf: (38/173-174).

Subsection One: Advantages of Medical Examination Before Marriage¹

1. Preventive Measure for Couples:

Medical examinations serve as a preventive tool for couples to limit the spread of hereditary and serious infectious diseases, either by halting the marriage altogether or by taking necessary medical precautions to avoid transmission to others.

2. A Healthy Outlook for Future Generations:

Studies indicate that a person with a hereditary disease can marry and have children, provided they choose a partner who does not carry the same condition.

3. Protection for Couples and Society:

Medical examinations protect society from the spread of diseases and help reduce any disasters that could cause financial and humanitarian crises for individuals, families, and communities.

4. Ideal Solution to Social Problems Between Couples:

Through medical examination, both prospective spouses can confirm each other's reproductive capabilities and the absence of infertility, as infertility is one of the significant threats to the continuity of marital relationships. Medical assessments also reveal the husband's ability to engage in marital relations, helping to remove significant challenges to the relationship and fostering a cohesive family free from problems.

5. Avoidance of Social and Psychological Issues:

Medical examinations help prevent social and psychological problems for families whose children may suffer from hereditary diseases. They also prevent marital issues when both spouses are aware that they may pass on a hereditary disease to their children, potentially leading to severe illness².

¹- Recent studies in genetics have shown that marrying relatives leads to genetic mixing. See: Marriage of Relatives in the Light of Islamic Jurisprudence: A Contemporary Perspective; Samha Atiah, Abdul Muneim Abu Al-Ata, published article at the Institute of Islamic Sciences, Department of Jurisprudential and Judicial Studies, Wadi University 2018. (1317).

²- See: Pre-Marriage Medical Examination and Its Medical, Juridical, and Regulatory Effects, Muhammad bin Mansour Al-Madkhali: (23).

Subsection Two: Disadvantages of Medical Examination Before Marriage:

Despite the benefits associated with conducting medical examinations before marriage, there are also drawbacks and negative aspects that affect individuals and society. These can be categorized as follows:

First: Health-Related Drawbacks of Medical Examination Before Marriage:

- illusion of Protection from Hereditary Diseases:

There is a misconception that undergoing medical examinations will protect individuals from hereditary diseases. This is inaccurate, as genetic testing typically only screens for one or two prevalent diseases in a specific community¹.

- Possibility of Errors in Test Results:

There is a risk of errors in the results of pre-marital medical examinations, which could lead to severe consequences for both parties involved in the marriage.

Second: Social Drawbacks of Medical Examination Before Marriage:

- Misconception about Inbreeding:

People may be led to believe that marriage between relatives is the direct cause of the hereditary diseases prevalent in our communities, which is not entirely accurate².

-Potential for Psychological Crises:

Negative results from medical examinations can lead to psychological distress and emotional shocks for both parties involved in the marriage.

- High Costs of Medical Examinations:

¹- See: Decisions of the National Committee for Genetic and Infectious Diseases, Ministry of Health, Saudi Arabia, 1423 AH.

²- See: Pre-Marriage Examination in Islamic Jurisprudence; article in Journal of King Saud University, Educational Sciences and Islamic Studies, Muslih Abdul-Hai Al-Najjar: (1144).

The expenses associated with pre-marital medical testing can be prohibitive for many individuals¹.

Third: Ethical Drawbacks of Medical Examination Before Marriage:

- Need for Confidentiality:

It is essential to maintain complete confidentiality regarding the medical examination results for both parties; however, leaks can occur, potentially harming those involved.

- Risk of Fraud and Corruption:

There is a possibility of forgery and deception in the certificates issued following pre-marital medical examinations, with individuals substituting these with false certificates of health and freedom from diseases. This could lead to another ethical issue: bribery.

Conclusion:

The concept of medical examination before marriage includes tests aimed at identifying hereditary, infectious, and sexual diseases, as well as daily habits that will impact the future health of the prospective spouses or their children upon conception; these tests are varied.

Islamic jurisprudence scholars are divided into three groups regarding pre-marital medical examinations: one group supports the practice, another group calls for its obligation, and a third group opposes it. The prevailing view among contemporary scholars is as follows:

It is argued that individuals should not be compelled to undergo genetic testing, emphasizing the importance of personal freedom while raising awareness about its significance. Furthermore, it is permissible for the state to issue a binding decision requiring those wishing to marry to undergo routine medical examinations before marriage, under two conditions: first, that this applies to serious infectious diseases such as hepatitis and HIV; and second, that the penalty for failing to undergo the examination should not be the annulment of the marriage contract or the non-recognition of its legal effects, but rather a different consequence, such as a financial penalty or similar measures.

¹- Previous source: (1146).

As for the Algerian law governing the medical examination certificate before marriage, it appears that its role is purely preventive, aimed at protecting couples, children, and society from hereditary or infectious diseases.

The pre-marital medical examination has a clear impact on achieving the objectives of Shari'ah; it aids in the preservation of both life and lineage through two approaches: a preventive approach before any harm occurs to the spouses, and a therapeutic approach to address any identified issues, such as preparing a treatment plan immediately upon discovering any diseases or obstacles revealed by the examination.

The study has shown that pre-marital medical examinations have both advantages and disadvantages, as follows:

Advantages:

- Medical examinations serve as a preventive measure for couples.
- They are a tool for healthy foresight for future generations.
- They provide protection for both spouses and society, and serve as an ideal solution for social problems between couples.

Disadvantages:

- There is a misconception that undergoing medical examinations will protect individuals from hereditary diseases, which is incorrect.
- Errors in the results of pre-marital medical examinations can lead to severe consequences for both parties involved.
- Potential for psychological crises and emotional shocks following negative results from the examinations.
- The high costs of medical examinations before marriage add financial burdens on young people preparing for marriage.
- There is a risk of forgery and deception in the certificates issued after medical examinations, leading to the issuance of false certificates of health and absence of diseases and health defects.

May peace and blessings be upon Muhammad, his family, and his companions. And our final supplication is, "Praise be to Allah, the Lord of the worlds."

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