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Premarital Medical Examination – A Comparative Study of Islamic Jurisprudence and Comparative Arab Law -

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Abstract:

The This study explores premarital medical examination from both Islamic and legal perspectives, focusing on its religious legitimacy and its regulation in Arab legislations such as those of Algeria, Qatar, Morocco, and the UAE, as it emphasizes the growing interest among scholars and professionals in institutionalizing this practice to address modern health and social challenges; adopting a descriptive-analytical methodology, the study critically examines religious sources, legal texts, and scholarly contributions.

The findings affirm that premarital screening is a vital preventive measure that helps limit the transmission of genetic and infectious diseases, safeguards future offspring, and supports the formation of healthy marital relationships, which aligns with the objectives of Sharia and the principles of contemporary public health.

Keywords: Medical examinations, medical tests, marriage, Sharia, comparative Arab law.

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1. Introduction:

Marriage is one of the most sublime and sacred human bonds, through which the bond of mercy and affection between spouses is strengthened, as marriage is a legitimate contract and a strong covenant between a man and a woman, aiming at chastity and protection, by establishing a Muslim family, and raising children with a good and righteous upbringing, where God Almighty described it as a solemn covenant in verse 21 of Surat An-Nisa.(The Holy Quran, Surat An-Nisa, part of verse 21.)

God also told us that marriage is one of His miraculous signs, as He tells us in verse 21 of Surat Ar-Rum, that He created for us from among ourselves mates that we may find tranquility in them, and He placed between spouses affection and mercy(The Holy), and also to achieve the succession of our master Adam to God on earth(The Holy Quran, Surat Al-Baqarah, part of verse 30.), and marriage was also prescribed to preserve the human soul and for reproduction and procreation.

The rapid development of research and technology has led to a significant expansion in the field of medicine, as it is no longer limited to preserving health by performing simple surgical operations, but the field of modern medical work has extended to performing surgeries that were not thought of by medical practitioners years ago, and to studying the conditions of various viruses and searching for their treatment, to preserve the physical and psychological health of the human being. In this regard, premarital medical examination is one of the procedures aimed at reducing the transmission of diseases between spouses in the future, by establishing a happy family enjoying good health.

In this article, we shed light on premarital medical examination between Sharia and law, as the importance of the study stems from the fact that it addressed a very important topic, which falls within the contemporary incidents of establishing a Muslim family, and is receiving increasing attention from Sharia and law scholars and specialists in medical sciences.

1.1 Study Methodology:

This study adopts a descriptive-analytical approach, as it is best suited for examining the legal, medical, and Islamic dimensions of premarital medical examination without manipulating the phenomenon itself ; the descriptive method was chosen because it allows for the systematic observation, interpretation, and analysis of the issue within its real-life context, enabling a comprehensive understanding of its various components.

To achieve the objectives of the research, data were collected from multiple sources, including:

- Islamic legal texts (Qur'an and Sunnah),
- Classical and contemporary jurisprudential writings,
- National legislation from Algeria and selected Arab countries,
- Medical and legal literature relevant to the subject,
- Previous studies published in academic books and peer-reviewed journals.

These materials were subjected to qualitative content analysis**,** involving legal and jurisprudential comparison, extraction of relevant rulings, and critical commentary on statutory and regulatory texts. The goal was to derive well-supported conclusions that clarify the religious and legal framework of premarital medical screening and evaluate its effectiveness in practice and legislation.

1.2 The study problem:

The study problem revolves around the nature of premarital medical tests, their religious ruling, and the position of the Algerian legislator and comparative Arab legislation on the subject.

To answer this problem, we followed the following plan:

- Introduction
- The first requirement: Definition of premarital medical examination
- The second requirement: The ruling on medical examination according to Sharia and law
- The third requirement: The advantages and disadvantages of premarital medical examination.

1.3 Previous Studies

- **The study by Badran and Badran (1996), entitled** *"Pre-marital Counseling and Medical Screening: An Islamic Perspective"***,** aimed to explore the role of pre-marital medical screening within Islamic contexts, highlighting its compatibility with religious teachings and public health imperatives, wher the author adopted a qualitative analytical methodology, relying on classical Islamic legal sources alongside modern public health literature. The key finding was that Islam encourages preventative health measures when they serve the public interest, including protecting future offspring and ensuring marital stability. The study recommended integrating religious counseling with medical screening to establish a comprehensive pre-marital program that aligns with both Sharia and public health needs.
- **The study by Al-Shanqeeti (1994), entitled** *"The Role of Pre-marital Screening in Reducing Genetic and Infectious Diseases"***,** sought to assess the effectiveness of mandatory medical screening in reducing the spread of hereditary and communicable diseases, as the researcher used a descriptive epidemiological method, drawing on hospital records and statistical data from Gulf countries, especially Saudi Arabia. The study concluded that pre-marital screening significantly reduced the incidence of inherited disorders among newborns in high-risk communities, and it emphasized the importance of enforcing legal frameworks and conducting community awareness campaigns to increase the acceptance and impact of such screenings.
- **The study by Abu Keila (2008), entitled** *"Pre-marital Counseling and Screening in Arab Societies: Towards a Holistic Approach"***,** addressed the multidimensional nature of pre-marital counseling, which includes not only medical testing but also psychological and cultural preparation for marriage. Employing a comparative qualitative method, the researcher analyzed existing counseling systems in Egypt, Jordan, and the UAE ; the study found

that integrated programs offering medical, psychological, and educational services were more effective in preparing couples for healthy and stable marital life, where Abu Keila advocated for institutionalizing such services through national healthcare systems in accordance with Islamic ethical values.

- The study by Adibat (2009), entitled *"Legal Regulations of Pre-marital Medical Screening in Arab Legislations"***,** focused on the legal aspects of premarital screening by examining personal status laws in Tunisia, Jordan, Saudi Arabia, and Egypt ; utilizing a comparative legal approach, the research investigated how different countries legislate and enforce medical screening requirements before marriage, as the findings revealed substantial differences in the level of legal obligation and enforcement. Countries with mandatory laws and legal penalties, such as Tunisia and Saudi Arabia, demonstrated higher compliance rates, where Adibat recommended harmonizing family law and health law to improve the legal efficacy of pre-marital medical examinations across the Arab world.

2. Definition of premarital medical examination:

2.1. Definition of premarital medical examination as an additional compound:

Premarital medical examination consists of three terms, and accordingly we define each term separately linguistically and Terminologically:

Examination:

- Linguistically: the intensity of the request during everything, we say: I examined a person, and I examined his matter, to know his nature. (Al-Harawi, 2001, p. 152)

Terminological definition: Examination is "a medical test to diagnose diseases and discover their causes" (Modern Medical Encyclopedia, 1970, p. 166). It is also defined as: "Examining the body using all available means, including x-rays, laboratory tests, and genetic testing, to discover the disease"(Al-Qara Da'i, 1425 AH, p. 152).

From the above, it is clear that there is agreement between the linguistic and terminological definitions.

Medical:

- Linguistically: Relating to the science of medicine, and the one who works in it is called a doctor, and its plural is doctors, a person seeks medical treatment for his pain, meaning he prescribes medicine for his illness. (Al-Farabi, 1987 , p. 170)

- Terminologically: "It is the science of diagnosing the conditions of the human body to maintain health, and prescribing medicine".

Marriage:

- Linguistically: From the verb to marry. (Ibn Mandhur & Abu Al-Fadl, 1414 AH, p. 291)

- Terminologically: There are several technical definitions of marriage, we will limit ourselves to only two definitions, the first legislative and the second jurisprudential:

The legislative definition of marriage: The Algerian legislator defined it as: "Marriage is a consensual contract between a man and a woman in a legal manner, the objectives of which are to form a family based on affection, mercy, and cooperation, and to protect the spouses and preserve lineages". (Algerian Family Law, 2005)

The Bahraini legislator defined it as: "Marriage is a legal contract between a man and a woman to form a family, with conditions and pillars, with the absence of obstacles, its goal is tranquility and chastity, and mutual legal rights and duties are based on it. (Bahraini Family Law No. 19 of 2017, 2017)

- Jurisprudential definition: "A contract established by the legislator to benefit, by way of originality, the man's right to enjoy the woman, and the woman's right to enjoy the man". (Saleh Mohamed, n.d, p. 172)

It is worth noting that marriage is one of the most important contracts mentioned in the Holy Quran, as God Almighty described it as a solemn covenant in verse 21 of Surat An-Nisa, and as one of His miraculous signs in verse 21 of Surat Ar-Rum; It is also a way to achieve the succession of our master Adam to God on Earth and to populate it, as stated in verse 30 of Surat Al-Baqarah. Marriage was also prescribed to preserve the human soul, procreation, and reproduction, as the Prophet Muhammad, may God bless him and grant him peace, said: (Marry the loving, fertile woman, ...), and the urging of marriage is an innate matter, and the urging of procreation to increase the human species.

2.2. Definition of premarital medical examination as a term:

There are several definitions, and the following is a review of the most important ones:

- "Providing mandatory or optional medical consultations to engaged couples, who are about to get married, based on laboratory and clinical tests, which are conducted for them before the marriage contract"(Badran & Badran, 1996, p. 83).

- "A set of psychological, cultural, and social guidelines, as well as medical examinations, as it is a complete consultation before marriage, and monitoring the previous medical history of the applicant, and thus aims to give engaged couples advice about the possibility of transmitting diseases to children, as well as giving the potential and alternatives to the engaged couples to build a healthy and sound family" (Abu Keila, 2008, p. 66).

-"It is an examination that includes tests that are concerned with identifying genetic, infectious and sexual diseases, which will affect the health of the eligible spouses or the children upon conception in the future"(Al-Shanqeeti, 1994, p. 199).

From the above, it is clear that the purpose of premarital medical examinations is to determine the health status of both engaged couples, and to alert them to the danger of transmitting diseases to their children in the future.

As for the position of the Algerian legislator on the definition of the medical examination, he did not formulate a specific definition for it, and was satisfied with stating its method and conditions in Articles 01 to 07 of Executive Decree No. 06-154, which determines the conditions and methods of working with the provisions of Article 07 bis of Law 05-02, amending and supplementing the Algerian Family Law.

Finally, it can be said that the premarital medical examination is "a set of medical examinations directed to those about to get married, to detect infectious and genetic diseases, to protect children from various genetic diseases".

3. Ruling on medical examination in Islamic law (religiously) and legally

3.1 Ruling on medical examination before marriage in Islamic jurisprudence:

Contemporary scholars have agreed on the legitimacy and permissibility of medical examination before marriage, but they differ on the ruling on its obligation, as they have two opinions on the issue, a group that supports the examination, wants to make it obligatory and mandatory, and a group that opposes its obligation on people.(Center of Research Excellence, 2014, p. 241)

- The opinion of those who oblige medical examination before marriage and their evidence: Scholars who say that examination is obligatory believe that the authorized authority can issue legislation or a law obligating people to undergo medical examination before marriage.(Al-Sagheer Abd Allah, 2007, pp. 111-112)

They cited several evidences, and the following is a review of the most important of them:

- Surah An-Nisa, verse 59, where God Almighty commanded us to obey God and obey the Prophet and those in authority, who are the rulers and governors, as long as obeying them is in the interest of Muslims, and since the medical examination is in the interest of the family and society as a whole, it is necessary to respond to the orders of the authorities and not to disobey them.(Al-Tabari, 1405 AH, p. 182)

- Surah Al-Baqarah, verse 195, where God forbids His servants from leading themselves to destruction, in this world and the hereafter, and the medical examination before marriage is a reason for preventing infectious diseases that are transmitted through marriage, so it must be carried out to avoid the destruction that may befall the family and society. (Atiya, 2001, p. 142)

- The Prophet, may God bless him and grant him peace, said: "There is no contagion, no bad omen, no Hamah, no Safar, and flee from the leper as you would flee from a lion" (Al-Bukhari, 2001). The hadith is evidence of the obligation to stay away and avoid the sick, and a medical examination is a way to distinguish the sick from others.

- The opinion of those who forbid the obligation to undergo a medical examination before marriage: They believe that it is not permissible to force anyone to undergo this examination, and they relied on several evidences, including:

- The pillars of marriage and its conditions, which are mentioned in the legal evidence, are specific, and ordering people to set a new condition for marriage is an addition to God's legislation, and it is an invalid condition, because the Prophet, may God bless him and grant him peace, said: "... What is the matter with men who stipulate conditions that are not in the Qur'an? .. Whatever condition is not in the Qur'an is invalid..." (Al-Bukhari, 2001, p. 73)

- The Prophet (peace and blessings of Allah be upon him) said: "If someone comes to you whose religion and character you are pleased with, then marry him to her; If you do not do so, there will be tribulation and corruption on earth" (Al-Tirmidhi, 1975 , p. 387), the evidence is that the Prophet (peace and blessings of Allah be upon him) did not say: "and his health", the basic principle is that a person is sound, and he is satisfied with the basics of religion and character.

- They also used as evidence the hadith qudsi: The Prophet (peace and blessings of Allah be upon him) said: "Allah the Most High says: I am as My servant thinks I am..." (Al-Bukhari, 2001, p. 121)

After presenting the evidence of both parties, we prefer the first opinion, because the medical examination before marriage is beneficial for the spouses, as it contributes to discovering and treating diseases, and reducing the possibility of transmitting infectious diseases to the spouses and children in the future, and thus contributes to preserving an important objective of the objectives of Islamic law, which is the preservation of humanity.

3.2. Premarital medical examination in Algerian family law:

The medical examination of those about to get married is a procedure in effect in most countries of the world, framed by legal legislation, as countries have issued national legislation regulating this preventive measure, including France, Cyprus, the United States of America(Adibat, 2009, p. 87), and it is also followed in most Arab countries, as the medical examination has been mandatory in Tunisia, Syria, Iraq, and Egypt for a long time, and recently joined by: Libya, the United Arab Emirates, Saudi Arabia(Al-Buaishi Al-Kilani, 2011 , p. 161), and Jordan(Adibat, 2009, pp. 87-88).

As for the position of the Algerian legislator on the medical examination before marriage, the recent amendments to the Algerian Family Law in 2005 included the obligation for those engaged to marry to undergo medical examinations before concluding the contract, as Article 07 bis state: "The engaged couple must submit a medical document, the date of its issuance does not exceed three (3) months, proving that they are free from any disease or any factor that may pose a risk that conflicts with marriage..

The notary or civil status officer must, before drawing up the marriage contract, ensure that both parties have undergone medical examinations and are aware of any diseases or factors that may be revealed that may constitute a risk that conflicts with marriage, and indicate this in the marriage contract, noting that the conditions and methods of applying this article are determined by the regulations (Family Code, 2005).

The doctor is not entitled to grant a medical certificate to those intending to marry except after they have undergone an examination, as the Algerian legislator stipulates that: “The doctor may not issue the medical certificate stipulated in Article 2 above, except based on the results of: -Comprehensive clinical examination.

-Blood type analysis (ABO+ rhésus) (Executive Decree No. 06-156, 2006)

The Algerian legislator separated the medical examinations and analyses that must be performed before marriage through Executive Decree No. 24-366, where he listed them as follows:(Executive Decree No. 24-366, 2024)

3.2.1 Diagnostic tests:

- A careful examination to look for family and personal history of chronic diseases, hereditary diseases or malformations, especially chromosomal abnormalities, genetic diseases and congenital heart diseases;
- Measuring arterial blood pressure;
- Measuring weight and height;
- Complete clinical examination;

3.2.2 Tests:

a- Mandatory biological tests:

- Determination of blood type;
- Serological tests for toxoplasmosis, rubella and syphilis;

b- Recommended biological tests:

- Serological test for viral hepatitis B (VHB);
- Serological test for viral hepatitis C (VHC);
- Serological test for human immunodeficiency virus (HIV);

The doctor may, if necessary, prescribe other necessary biological tests in the event of signs and symptoms that could lead in particular to sexually transmitted diseases; It is also recommended to review the health record book to evaluate vaccinations (tetanus, tuberculosis, polio, measles, German measles, and whooping cough). It should be noted that the will of the spouses is the decisive factor in concluding the marriage contract, as the notary and the civil status officer cannot refuse to conclude the marriage contract for medical reasons contrary to the will of the two parties.

3.3. The ruling on premarital medical examination in Arab legislation related to personal status:

We have chosen only a sample of Arab legislation, and the following is a review of the position of the Qatari Family Law, the Moroccan Family Code, and the UAE Personal Status Law:

3.3.1 Qatari Family Law:

Regarding the position of the Qatari legislator on premarital medical examinations, it stipulated that marriage applicants must undergo medical examinations before concluding the contract, as Article 18 of the Qatari Family Law states:"Each party to the contract shall submit to the notary a certificate from the competent medical authority stating that he or she is free from hereditary diseases and diseases that are determined by a decision issued by the National Health Authority in coordination with the relevant authorities, and the notary must notify each of them of the content of the medical certificate submitted by the other party before notarizing the contract"; The notary may not refuse to notarize the contract due to the results of the medical examination, if both parties wish to complete it". (Al Meezan, 2006)

Through the text of the article, it is clear that the Qatari legislator has permitted the conclusion of a marriage contract if the results of the tests are positive, with the consent of both parties and their insistence on completing the marriage contract procedures.

3.3.2 Moroccan Family Code:

The Moroccan legislator addressed the medical examination before marriage in the sixth section entitled: Administrative and formal procedures for concluding marriage contracts, which falls under the first book: (Marriage), as Article 65, paragraph 4 of the Code states: "A file for the marriage contract shall be created, kept by the registry of the family court department of the place where the

contract is concluded, and shall include the following documents: ..., 4- A medical certificate for both fiancés, the content and method of issuance of which shall be determined by a joint decision of the Ministers of Justice and Health...". (Moroccan Family Code, 2004)

In this regard, the joint ministerial circular mentioned in Article 65 above specified the data that the medical certificate must include: (Joint Ministerial Resolution, 2004)

- The name and signature of the doctor, as well as the institution to which he belongs if it is affiliated with the public sector, the private sector, or the semi-public sector;
- The date of the examination and additional examinations, if necessary;
- The full name of the applicant for the certificate;
-Number of his national ID card, passport, or driver's license;
-The doctor's conclusions;
-A phrase proving that this certificate was submitted for marriage.

3.3.3 UAE Personal Status Law:

The UAE legislator addressed the medical examination before marriage in the second chapter entitled "General Provisions for Marriage", which falls under the first book (Marriage), where it stipulated: "To conduct a marriage contract, it is required to submit a report from a specialized medical committee formed by the Minister of Health, stating that the couple is free from the diseases for which this law stipulates a request for separation"(Federal Law No. 28, 2005).

The UAE legislator emphasized once again the necessity of conducting a medical examination before marriage by the engaged couple, where it stipulated that: "The notaries may not conduct a marriage contract except after presenting a medical certificate approved by the official authority, stating that the spouses are free from the diseases stipulated in the Personal Status Law, and the

original certificate is kept to be delivered to the court to be preserved with the contract documents, and if it is proven from the medical certificate that both spouses or one of them suffers from one of the diseases stipulated in the law, the authorized person must refer them to the competent judge"(Ministerial Resolution No. 785, 2012).

Through the aforementioned set of legal texts, we note that most Arab legislations related to personal status stipulate the necessity of conducting a medical examination before marriage, but they provide the couple with the opportunity to conclude a marriage contract if the examination results are positive, with the consent of both parties.

4. Benefits of premarital medical examination:

Premarital medical examination has several benefits and positives, which can be summarized in the following elements:

- Reducing the spread of some hereditary blood diseases, and some infectious diseases, such as hepatitis B - C, and acquired immunodeficiency syndrome.
- Detecting the blood type of the engaged couple to know the possibility of a healthy pregnancy in the future, and avoiding the problem of blood group incompatibility.(Al-Omari, 1992, p. 20)
- Verifying the safety of the fiancée's organs by a specialist doctor in obstetrics and gynecology, as well as the safety and type of the hymen, to ensure the continuation of married life. (Al-Marzouqi Hassan, 2002, p. 860)
- Reducing the financial burdens resulting from treating those infected with sexually transmitted diseases, as well as the expenses resulting from teaching children infected with hereditary diseases, in air-conditioned departments that require specialized material and human capabilities. (Al-Marzouqi Hassan, 2002)
- Detecting serious diseases at the beginning of infection, known as early diagnosis, which benefits the patient himself from starting treatment. (Al-Madkhali, 2009, p. 68)

- Avoiding social and psychological problems for families whose children suffer from these diseases.
- Spreading health awareness about the concept of comprehensive healthy marriage, by educating those about to get married healthily from the aspects that lead to marital happiness and avoiding the causes of disagreement and divorce, such as verifying the ability of each of them to bear their full responsibility without any deficiency.
- Achieving reassurance and tranquility for those about to conclude a marriage contract, by ensuring that both parties are free from serious and contagious diseases, or hereditary diseases.

5. Disadvantages of premarital medical examination:

Despite the benefits and positives of premarital medical examination, it has some negatives, which can be summarized in the following elements:

- This examination may lead to psychological complexes, if the tests prove that there is a possibility of a woman suffering from infertility or breast cancer, if others see it, which causes her psychological and social harm. (Achqar, 2000, p. 83)
- Premarital medical examinations may lead to missing the opportunity to get married, as a result of unconfirmed tests. (Achqar, 2000)
- The medical examination causes anxiety and depression, especially if the person is told that he has an incurable terminal disease. (Al-Qura Daghi Ali & Al-Muhammadi, 2006, p. 262)
- By following the reality of the practical application of the procedures of this examination in Algeria, for example, we find that the absence of deterrent penalties in the event of non-compliance with it, and ignoring it by those about to get married, has reduced its credibility, as it is just a certificate presented to those about to get married without examining them, for several reasons, including

that the person about to undergo this examination is a relative of the doctor, or through favoritism, or bribery.

6. Conclusion:

With the help and guidance of God, we have completed this article entitled: "Premarital Medical Examination between Sharia and Law", and the following is a statement of the most important results and recommendations that the current study concluded:

6.1Results:

- Contemporary researchers disagree about the obligation of medical examination or not, and the correct opinion is that it is obligatory, as it contributes to preserving human life, and it is one of the objectives of Islamic Sharia.
- The Algerian legislator organized the premarital medical examination in the Family Law, by amending the law in 2005, and making it obligatory, but this obligation was not accompanied by deterrent measures in the event of its violation.
- The Algerian legislator separated the provisions of medical examinations and analyses before marriage through Executive Decree No. 06-156, and Executive Decree No. 24-366.
- Premarital medical examination is stipulated in most Arab legislations related to personal status, such as the Qatari Family Law, the Moroccan Family Code, and the UAE Personal Status Law.
- Premarital medical examination has many positives, the most important of which is protecting society from the spread of genetic diseases and contributing to early detection of diseases. It also has some negatives, the most important of which is revealing the personal secrets of the engaged couple.
- Premarital medical examination contributes to protecting both parties from infectious diseases, sexually transmitted from the infected party to the healthy party.

6.2Recommendations:

- The need to strengthen the legislative authority for the mechanisms that ensure the obligation of medical examination.
- Establishing medical unit centers specialized in conducting premarital medical examinations for those intending to marry by the Ministry of Health.
- Conducting more research on developments related to personal status contracts by researchers and specialists in the field of Sharia, law, and medical sciences.

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