

Research Article

The Permission or Otherwise of Prenuptial Sexual Transmitted Diseases Test (STD) on Prospective Spouses in Islam

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Abstract

The permission or otherwise of prenuptial STD test on prospective spouses in Islam: Premarital medical examinations on Sexual transmitted diseases (STD) promote the wellbeing of the future offspring as well as the welfare of the family and society. Marriage is a positive and effective means to protect individuals, especially young People, from indulging in illicit sexual activities that could lead to infection with the HIV, Hepatitis and inherited disease called Genotype virus. The teachings of the prophet Muhammad (SAW) urge Muslims to make marriage affordable and easy for all members of the society. Premarital

medical testing on Sexual Transmitted Diseases usually tests for one or two disease because there are more than 5000 hereditary diseases and more are being discovered every day in Nigeria and the world at large. The findings revealed that, prenuptial Sexual Transmitted Diseases is permissible in Islam. Therefore needs urgent step to address the issues for precaution. Data are drawn from books, articles, scholarly journals and others.

Keywords: Permission; Otherwise; Prenuptial; STD; Spouses; Islam

Introduction

Islam is a complete legal system which regulates and guides all aspects of human life. Islam aimed at protecting life, religion, property, faculty of mind and lineage as well as promoting moral and social welfare of the Muslims. This had made it a dynamic legal system which gives a scholar the room for giving opinion regarding any matter bordering on interpretation.

Marriage as a social and religious institution occupied a high position in Islam [1]. Therefore, it requires full explanation in order to explain the point and rules of Shari'ah for precaution from sexual transmitted diseases. The holy Qur'an clearly explains the status of women:

“And among His signs is this that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are signs for a people who reflect”.

In another chapter Allah said:

“We indeed sent many Messengers before you and we gave them wives and children;”

The above verse explains clearly the history of marriage in which prophets, messengers were married according to exhortation of Islam, and Almighty Allah blessed with them sons, grandsons through marriage. It is not only the culture of a particular people that introduced the origin of marriage; rather the above verse explains the marriage as norms and culture of prophets and messengers [2-5].

The prophet Muhammad (SAW) encourages getting marriage as he said:

“O young men, whoever among you can afford it, let him get

married, for it is more effective in lowering the gaze and guarding one's chastity. Whoever cannot afford it, let him fast, for it will diminish his desire.”

In another tradition, the prophet (SAW) Said [6, 7]:

It was narrated from Abu Hurairah that: the Prophet (SAW) said: “A woman may be married for four things: Her wealth, her lineage, her beauty or for her religion. Choose the religious, may your hands be rubbed with dust (i.e., may you prosper).”

Due to the nature of disease therefore, there is pressing need to reduce and/or quench the spread of the disease among the Muslim Ummah which can be done through prenuptial STD test on the prospective spouses.

The term sexually transmitted disease (STD) refers to a variety of clinical syndromes and infections caused by pathogens that can be acquired and transmitted through sexual, activity. Physicians and other health-care providers play a critical role in preventing and treating STDs.

Genotype is an organism is the complete set of genetic material inherited from both parents; the genotype is after denoted by later AA, AS, SS, AC.

The problem to avoid with genotype compatibility for intending couples is the sickle cell disease (a recessive disorder)-a very serious medical condition with high prevalence rates in Africa south of the Sahara.

Hepatitis refers to an inflammatory condition of the liver. It's commonly caused by a viral infection, but there are other possible causes of hepatitis. These include autoimmune hepatitis and hepatitis that occurs as a secondary result of medications, drugs, toxins, and alcohol. Autoimmune hepatitis is a disease that occurs when your body makes antibodies against your liver tissue[8-10].

Viral infections of the liver that are classified as hepatitis include hepatitis A, B, C, D, and E. A different virus is responsible for each type of virally transmitted hepatitis.

By doing so, the life of innocent people will be spared, to this end Allah says:

“.....and if one save a life, it would be as if he save the life of the whole people”

This study will therefore discuss the juristic opinion as well as the contemporary Muslim scholars as to the legality or otherwise of the prenuptial Sexual Transmitted Disease test on prospective spouses with the view to create awareness to the Ummah in general.

Marriage in Islamic Perspective

Marriage “Nikah” in Islam is the union of a man and a woman. It is a religious duty, a moral safeguard and a social commitment. As religious duty that must be fulfilled; but like all other duties in Islam, it is enjoined only upon those who are capable of meeting the responsibilities involved. Marriage is traced to the creation of Adam and his wife Hauwa as his companion.

The Quran states:

“And one of Allah’s signs is that He creates for you mates from yourselves, that you may dwell in tranquility with them, and has ordained between you love and mercy.” “And Allah has made for you mates from yourselves and made for you out of them, children and grandchildren.”

From this union of love, the husband and wife are supposed to live in peace, procreate and nurture children who will continue the human race and development of the society. The union of the man and his wife is traced to a common origin of equality because both are created from a single soul [11-15].

The Qur’an also states:

“And Allah made for you mates of your own nature and made for you, out of them sons, and daughters and grand children, and provided for you sustenance of the best.”

The Islamic marriage is based on the need to achieve and maintain tranquility in society. Thus the family, which comes into being, as a result of this marriage is the basic foundation of society. Although, marriage is strongly enjoined and celibacy is discouraged, those who are not ready to undertake this solemn covenant and the responsibilities attached to it should postpone it. Marriage is viewed “as a means of emotional and sexual gratification, as a mechanism of tension reduction, legitimate procreation and social placement; as an approach to interfamily alliance and group solidarity” Islamic marriage is also a social and religious institution.

The Holy Prophet (P.B.U.H) has emphasized on marriage in a large number of ahadith. Prophet (P.B.U.H) said on one occasion:

Abdullah (b. Mas'ud) (Allah be pleased with him) reported that Allah's Messenger (may peace be upon him) said to us: O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford It should observe fast for it is a means of controlling the sexual desire.

It was reported by Anas Ibn Malik. The prophet Muhammad (SAW) praised Allah and glorified Him, and said: I observe prayer and sleep too; I observe fast and suspend observing them; I marry women also, And he who turns away from my Sunnah, he has no relation with Me.

These two Hadiths highlights the importance of marriage contract. An important purpose of marriage is to attain psychological, emotional and spiritual companionship. Marriage helps men and women to lead a life of chastity; it secures them against immoral sexual indulgence and develops smooth relationship among a couple. However, in anti-women practices, women are given as blood money or compensation against a murder or dispute. She is insulted and taunted by her in laws. In such cases, it is impossible to achieve the basic purpose of marriage contract i.e., peace and harmony.

Marriage in Islam may thus be broadly summarized as follows: a means of emotional and sexual gratification

- i. A mechanism of tension reduction
- ii. A means of legitimate procreation
- iii. A social placement
- iv. An approach to inter – family alliance and group solidarity
- v. An act of piety (Taqwa)
- vi. It is a form of worship (Ibaadah) of Allah and obedience to His Messenger (SAW).

Concepts of Marriage in Islam

One of the most comprehensive definitions is as being provided by Ibn Uthaimin who defined marriage as: “It is a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society.”

Marriage is a religious duty and is consequently a moral safeguard as well as a social necessity. Marriage is an acts of outlet for sexual needs and regulate it so one does not become a slave to his/ her desires. It is a social necessity because through marriage, families are established and the family is the fundamental unit of our society. Furthermore, marriage is the only legitimate or halal way to indulge in intimacy between a man and a woman. Islam urges us to control and regulate our desires, whatever they may be so that we remain dignified and not become like animals.

Marriage, as prescribed by Allah, is the lawful union of a man and woman based on mutual consent. It is a contract that results in the man and woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations. It is a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society.

Marriage is a religious duty and is consequently a moral safeguard as well as a social necessity because through marriage, families are established and the family is the fundamental unit of the society [16-19].

As for the definition of marriage in fiqh: A contract that results in the two parties physically enjoying each other in the manner allowed by the Shari'ah. Muhammad Abu Zahrah defined marriage as a modern scholar: “A contract that results in the man and

woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations”.

Marriage is a matrimonial relation between two persons of the opposite sex and gives legalization of procreation of child. It creates such a bonding which treats a unique union and is one of the oldest institutions of human civilization. Considerable attention has been paid by all system of law to the principles, rules and regulations to the contract of marriage. Thus marriage is a legally and socially sanctioned union between two persons of the opposite sex for procreation and legalization of child.

Marriage is an institution which legalizes the sexual relations between man and woman so as to preserve the human species, the growth of descent, promotion of love and union between the parties and the mutual help to earn livelihood.

Principles of Marriage in Islam

The fundamental principles of marriage according to schools of thoughts are ‘Proposal’ (Ijab) and acceptance (Qabool). All the four schools of Fiqh concur that marriage is performed by the recital of a marriage contract which contains an offer made by the bride or her deputy (na’ib), such as her guardian or agent (wakil), and corresponding acceptance by the groom or his deputy. A mere agreement without the recital of the contract does not amount to marriage.

The schools also agree that a marriage contract is valid when recited by the bride or her deputy by employing the words, ankahtu or zawwajtu (both meaning, I gave in marriage) and accepted by the groom or his deputy with the words, 'qabiltu' (I have accepted) or 'raditu' (I have agreed) [7].

The Hanafi’s say: A marriage contract is valid if recited by any word conveying the intention of marriage, even if the words belong to the roots al-tamlik, al-hibah etc provided these words indicate their being used for the purpose of marriage.

They have based their argument on this narration from the Sahih al-Bukhari and the Sahih Muslim. A woman came to the Prophet (s) and said: "O Apostle of Allah. I have come to offer myself to you." On hearing this, the Prophet (s) lowered his head and did not reply. Then one of those present said: "If you do not want her marry her to me." The Prophet (s) asked him: "Have you anything?" He replied, "By God. I have nothing." Again the Prophet asked him. "Have you any knowledge of the Qur'an?" He replied regarding the extent of his knowledge of the Qur'an. Then the Prophet said. "I make her your property in exchange for your knowledge of the Qur'an" (using the word mallaktul).

The couple to be married must both be:

Mature: There is consensus among the schools that menses and pregnancy are the proofs of female adulthood. Pregnancy is a proof because a child comes into being as a result of the uniting of the sperm with the ovum: and menses, because, like the production of sperm in male, is a mark of female puberty. All schools, except the Hanafi, consider the growth of pubic hair as a sign of adulthood, but the Hanafis consider them no different from other hair of the body. According to the Shafi’i and the Hanbali schools, the adulthood of both the sexes is established on their completing fifteen years. According to the Malikis, is seventeen

years for both the sexes. The Hanafis consider eighteen years for a boy and seventeen years for a girl the age of maturity.

Sane: All the schools agree that sanity and adulthood (bulugh) are necessary qualities for both the parties to the contract, unless the contract is concluded by the guardian of any of them.

1. Muslim (except the bride, who may be from people of the books)
2. Both the proposal and acceptance must be made in past tense in front of witnesses, either two males or one male and two females. All witnesses must also be sane, mature Muslims.
3. The marriage must not be intended to last for a limited period.
4. The minimum maher must be paid by the husband to the wife [17].

According to Islam, both men and women have rights over each other when they enter into a marriage contract, with the husband serving as protector and supporter of the family most of the time, from his means. This guardianship has two aspects for both partners.

The husband is financially responsible for the welfare and maintenance of his wife or wives and any children they produce, to include at a minimum, providing a home, food and clothing. In return, it is the duty of the wife to safeguard the husband's possessions and protect how wealth is spent. If the wife has wealth in her own capacity she is not obliged to spend it upon the husband or children, as she can own property and assets in her own right, so the husband has no right for her property and assets except by her will. A pre-marital agreement of the financial expectation from the husband is in the mahr, given by him to the wife for her exclusive use, which is included as part of his financial responsibility.

Several commentators have stated that the superiority of a husband over his wife is relative, and the obedience of the wife is also restrictive. Women are also reminded that in case the husband is not fulfilling his responsibilities, there is no stigma on them if they make terms of peace between themselves; and making peace is better (than divorce). (Quran 4:128):

“And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better. And human souls are swayed by greed. But if you do good and have Taqwa, verily, Allah is Ever Well-Acquainted with what you do.

Invalid (Fasid) Marriage

An Irregular or Fasid Marriage is one which is not unlawful in itself but is unlawful "for something else" as where the obstacle to inter marriage is temporary or relative or when the irregularity arise out of a defect in procedure of making the marriage contract, such as absence of witness. Thus the following marriages are considered irregular:

- a. A marriage contracted without required number of witness;
- b. Some scholars added HIV test as requirement of marriage
- c. A marriage with women during her Iddat period;
- d. A marriage with women without the consent of her guardian

when such consent is considered necessary;

- e. A marriage prohibited on account of difference of religion;
- f. A marriage with women who is pregnant, when the pregnancy was not caused by adultery or fornication;
- g. A marriage with a fifth wife.
- h. Fix duration of marriage .

Basis of Marriage in Islam

Marriage may be constituted without ceremonial; there are no specific rites; no officiates; no irksome formalities. Nevertheless, following are the basis/fundamentals of marriage as follows:

Marriage sermon: this is first step/fundamentals of marriage in which the male will approaches the lady for the purpose of marriage; if she agreed with him to marry she will allow him to meet her parents, such meets in Islam known as marriage sermon that is seeking permission from her family.

Offer on the part of one party to the marriage: Note: The "Contracting Parties" would not be within the prohibited degrees to marriage.] this will take place during wedding ceremony

Acceptance by the other party;

Note: The offer and acceptance may be made by the parties, if both are competent. In case of legal incompetency, like minority or unsoundness of mind, the guardians may validly enter into a contract of marriage on behalf of their wards.

Presence of two witnesses: The Shafi'i, the Hanafi and the Hanbali schools concur that the presence of witnesses is a necessary condition for a valid contract. The Hanafi School considers as sufficient the presence of two men or a man and two women. However, if all the witnesses are women, the contract is not valid. This school does not consider 'adalah' (justice) as a condition for the acceptability of the witnesses. The Shafi'i and the Hanbali schools consider as necessary the presence of two male Muslim witnesses possessing the quality of 'adalah'. According to the Malikis, the presence of witnesses is not necessary at the time of the contract but their presence is necessary at the time when marriage is to be consummated. Therefore, if the contract is recited without the presence of witnesses, it is valid. But, when the groom intends to consummate the marriage it is incumbent upon him to have two witnesses. If the marriage is consummated without the witnesses, the contract becomes void compulsorily, and this is considered as amounting to an irrevocable divorce.

1. The words with which the marriage is contracted must be clear and unambiguous.
2. The proposal and acceptance must be expressed in one and the same meeting.
3. Dower is also a significant part of a valid marriage.

Thus the essential conditions of a valid marriage may be summarised as follows; "Ijab (offer), qubul (acceptance), balig (adult age or puberty), rashid (sound mind not majnum or non-compos mentis) parties-i.e. groom and bride or when minor their guardians, presence of witness (in Hanafi Law) and same meeting (that is at one session). Thus completion of this contract of marriage which commence with proposal and ends with the consent.

All the Four Sunni schools of Fiqh concur that marriage is performed by the recital of a marriage contract which contains an offer made by the bride or her deputy (na'ib), such as her guardian or agent (wakil), and corresponding acceptance by the groom or his deputy. A mere agreement without the recital of the contract does not amount to marriage [20-23].

The schools also agree that a marriage contract is valid when recited by the bride or her deputy by employing the words, ankahtu or zawwajtu (both meaning. I gave in marriage) and accepted by the groom or his deputy with the words, 'qabiltu' (I have accepted) or 'raditu' (I have agreed).

Sexual Transmitted Disease

Sexually transmitted diseases (STDs), or sexually transmitted infections (STIs), are infections that are passed from one person to another through sexual contact. The contact is usually vaginal, oral, and anal sex. But sometimes they can spread through other intimate physical contact. This is because some STDs, like herpes and HPV, are spread by skin-to-skin contact.

There are more than 20 types of STDs, including; Chlamydia, Genital herpes, Gonorrhea, HIV/AIDS, HPV, Pubic lice, Syphilis, Trichomoniasis etc. Most STDs affect both men and women, but in many cases the health problems they cause can be more severe for women. If a pregnant woman has an STD, it can cause serious health problems for the baby.

The term sexually transmitted diseases (STDs) refer to a variety of clinical syndromes and infections caused by pathogens that can be acquired and transmitted through sexual, activity. Physicians and other health-care providers play a critical role in preventing and treating STDs.

HIV and AIDS

HIV remains an important public health challenge and a leading cause of death and disability. According to a report revealed by the world health organization; there were approximately 36.7 million people living with HIV as of 2018. Millions of people have died of HIV related disease so far since the outbreak of this disease.

Scientists around the globe have differed the clear and actual origin of HIV. This had led to the publication of various versions of stories about how and where the disease actually originated from.

Some suggested that, HIV have been in existence over the past 90 years and it is widely believed that it have been originated in Kinshasa in the Republic of Congo around 1920 when it was crossed species from chimpanzees to human. According to another version of the study, it was allegedly that HIV was engineered in an alleged American Laboratory as a form of cocfargo egg or agenda to reduce the number of black Americans. HIV is the abbreviation for "Human Immunodeficiency Virus" while AIDS on the other hand stands for; "Acquired Immune Deficiency Syndrome.

HIV is a virus that attacks the immune system. Over a period of time, HIV can destroy so many cells that body can't fight infections and diseases, eventually, leading to the most severe form of HIV infection; Acquired Immune Deficiency Syndrome or AIDS. A person with AIDS is very vulnerable to cancer and to life-threatening infections, such as pneumoria [24].

Modes of transmission of HIV

HIV contains in the body fluids such as blood, semen, breast milk and vagina fluids of an infected person. People who are infected with HIV are often referred to as HIV positive, while uninfected people on the other hand are referred to as HIV negative.

There are a lot of myths around how HIV is passed from an infected person to another. There are only a few ways or modes of transmitting the virus.

HIV can be transmitted through any of the following ways;

1. Unprotected sex with an infected person: all unprotected sex with an infected sex contained some risk, unprotected anal sex is more riskier than unprotected vaginal sex.
2. Multiple sex partners or the presence of other sexually transmitted diseases (STDs) can also increase the risk of infection during sex. Unprotected oral sex can also be a risk for HIV transmission, but is more of lower risk than anal or vaginal sex.
3. Sharing of unsterilized needles, syringes, or other equipments used to prepare illicit drugs for injection as well as any other sharp equipment like clipper, razor blade etc.
4. Blood transfusion and organ/tissue transplanting which contained HIV as another way through which HIV is transmitted from an infected person to another.
5. Mother to child/baby transmission: is another mode through which HIV is transmitted from an infected mother to a child or baby. This usually occurred in the process of child delivery and baby breast feeding of an infected mother or woman.

However, all the above mentioned mode of ways of HIV transmission, sexual intercourse places the most important role in the speedy spread of HIV around the globe.

The effects of HIV on Marriage

Infection with HIV usually has a huge physical, mental, social and economic impact on infected individuals, their families as well as the community in which they live.

Some other effect of HIV may include; the stigma and social discrimination against person living with HIV. Apart from having to endure treatment with severe side-effect, they constantly have to cope with rejection and social discrimination. People with HIV have to put with being labeled as victims a term that implied defeat, helplessness and dependence upon help from others. However, the form of stigma and discrimination vary geographically, for instance some countries do not allow visa for people living with HIV.

Genotype

Genotype is an organism is the complete set of genetic material inherited from both parents; the genotype is after denoted by later AA, AS, SS, AC.

A genotype is the entire genetic constitution of an individual, i.e. the genetic makeup of an organism or group of organisms with reference to a single trait, set of traits, or an entire complex of traits. In a nutshell: your genotype is your complete heritable

genetic identity; the sum total of genes transmitted from parent to offspring.

There are four hemoglobin genotypes (hemoglobin pairs/formations) in humans: AA, AS, SS and AC (uncommon). SS and AC are the abnormal genotypes or the sickle cells. We all have a specific pair of this hemoglobin in our blood which we inherited from both parents. Genotype can be simply defined as the genetic constitution of an individual organism.

The problem to avoid with genotype compatibility for intending couples is the sickle cell disease (a recessive disorder a very serious medical condition with high prevalence rates in Africa south of the Sahara [25]).

Types of genotype

The genotypes in humans are AA, AS, AC, SS. They refer to the hemoglobin gene constituents on the red blood cells. AC is rare whereas AS and AC are abnormal.

Genotype Compatibility Chart Study this table below carefully:

- i. AA + AA = AA, AA, AA, AA (Excellent)
- ii. AA + AS = AA, AS, AA, AS, (Good)
- iii. AA + SS = AS, AS, AS, AS, (Fair)
- iv. AA + AC = AA, AA, AA, AC. (Good)
- v. AS + AS = AA, AS, AS, SS, (Very Bad)
- vi. AS + SS = AS, SS, SS, SS, (Very Bad)
- vii. AS + AC = AA, AC, AS, SS. (Bad; Advice needed)
- viii. SS + SS = SS, SS, SS, SS, (Very Bad)
- ix. AC + SS = AS, AS, SS, SS, (Very Bad)
- x. AC + AC = AA, AC, AC, SS. (Bad; Advice needed)

Compatible genotypes for marriage are:

- i. AA marries an AA. That's the best compatible. That way you save your future children the worry about genotype compatibility.
- ii. AA marries an AS. You'll end up with kids with AA and AS which is good. But sometimes if you're not lucky all the kids will be AS which limits their choice of partner.
- iii. AS and AS should not marry, there is every chance of having a child with SS.
- iv. AS and SS shouldn't think of marrying.
- v. And definitely, SS and SS must not marry since there's absolutely no chance of escaping having a child with the sickle cell disease.

Viral hepatitis

Hepatitis refers to an inflammatory condition of the liver. It's commonly caused by a viral infection, but there are other possible causes of hepatitis. These include autoimmune hepatitis and hepatitis that occurs as a secondary result of medications, drugs, toxins, and alcohol. Autoimmune hepatitis is a disease that occurs when your body makes antibodies against your liver tissue.

Liver is located in the right upper area of your abdomen. It performs many critical functions that affect metabolism throughout your body, including: bile production, which is essential to digestion, filtering of toxins from your body excretion of bilirubin (a product of broken-down red blood cells), cholesterol, hormones, and drugs breakdown of carbohydrates, fats, and proteins activation of enzymes, which are specialized proteins essential to body functions storage of glycogen (a form of sugar), minerals, and vitamins (A, D, E, and K) synthesis of blood proteins, such as albumin synthesis of clotting factors

The types of viral hepatitis

Viral infections of the liver that are classified as hepatitis include hepatitis A, B, C, D, and E. A different virus is responsible for each type of virally transmitted hepatitis.

Hepatitis A is always an acute, short-term disease, while hepatitis B, C, and D are most likely to become ongoing and chronic. Hepatitis E is usually acute but can be particularly dangerous in pregnant women.

Hepatitis A: Hepatitis A is caused by an infection with the hepatitis A virus (HAV). This type of hepatitis is most commonly transmitted by consuming food or water contaminated by feces from a person infected with hepatitis A.

Hepatitis B: Hepatitis B is transmitted through contact with infectious body fluids, such as blood, vaginal secretions, or semen, containing the hepatitis B virus (HBV). Injection drug use, having sex with an infected partner, or sharing razors with an infected person increase your risk of getting hepatitis B. Many people in Nigeria live with this chronic disease.

Hepatitis C: Hepatitis C comes from the hepatitis C virus (HCV). Hepatitis C is transmitted through direct contact with infected body fluids, typically through injection drug use and sexual contact.

Hepatitis D: Also called delta hepatitis, hepatitis D is a serious liver disease caused by the hepatitis D virus (HDV). HDV is contracted through direct contact with infected blood. Hepatitis D is a rare form of hepatitis that only occurs in conjunction with hepatitis B infection. The hepatitis D virus can't multiply without the presence of hepatitis B. It's very uncommon in the United States.

Hepatitis E: Hepatitis E is a waterborne disease caused by the hepatitis E virus (HEV). Hepatitis E is mainly found in areas with poor sanitation and typically results from ingesting fecal matter that contaminates the water supply. This disease is uncommon in the United States. However, cases of hepatitis E have been reported in the Middle East, Asia, Central America, and Africa, according to the CDC Trusted Source.

Causes of noninfectious hepatitis

Excessive alcohol consumption can cause liver damage and inflammation, some people were inherited from their fathers. Over time, it can cause permanent damage and lead to liver failure and cirrhosis, a thickening and scarring of the liver. Other toxic causes of hepatitis include overuse or overdose of medications and exposure to poisons.

Signs and symptoms of acute hepatitis appear quickly. They include: fatigue, flu-like symptoms, dark urine, pale stool, and

abdominal pain, loss of appetite, unexplained weight loss, yellow skin and eyes, which may be signs of jaundice. Chronic hepatitis develops slowly, so these signs and symptoms may be too subtle to notice.

The Legal Position of Pre-Marital (STD) Test

HIV/AIDS and Genotype have been scientifically proved to be incurable disease while Hepatitis is curable with long term treatment. It is mostly transmitted through sexual contact with an infected person/partner as well as exchange of body fluids (semen, vagina secretion, anal fluids). However, sexual intercourse with an infected partner, unprotected sexual contact and multiple sex partners remained the most highly and commonly ways through which HIV/AIDS and Hepatitis is being rapidly spread around the globe. This has therefore resulted in negative impact on the affected individual in particular and the society or community, which he/she belongs, in general.

The Shari'ah, as a total way of life, has so far laid down some basic ways through which the spread of HIV/AIDS and Hepatitis can be stopped or prevented among the Ummah, one of which is Marriage. Marriage has been recommended by Islamic law in order to discourage unlawful sexual intercourse which will as well prevent the spread of HIV/AIDS and Hepatitis. To this end the Prophet (SAW) was reported to have said:

Abdullah (b. Mas'ud) (Allah be pleased with him) reported that Allah's Messenger (may peace be upon him) said to us: O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford It should observe fast for it is a means of controlling the sexual desire.

It was reported by Anas Ibn Malik. The prophet Muhammad (SAW) praised Allah and glorified Him, and said: I observe prayer and sleep too; I observe fast and suspend observing them; I marry women also, And he who turns away from my Sunnah, he has no relation with Me.

Since one of the main objectives of Islamic law (maqasid-al-shariah) is the protection of life, therefore the issue of Sexual Transmitted Disease (STD) test such as HIV/AIDS, Hepatitis and Genotype status of the parties to a marriage becomes an issue among the contemporary Muslim scholars as to whether the test is permissible or not to which Many contemporary scholars have shared various opinions; some groups held that it is permissible while other group go the contrary opinion.

Islamic Perspective on the Prenuptial Medical Examination

Prenuptial medical examination

As rightly stated in the introductory part of this chapter, the main objectives of Shari'ah are the preservation or the protection of life. Accordingly, as such anything which will become a threat to life or trying to diminish the peaceful being of human life, such as in the case of Hepatitis, Genotype and HIV/AIDS, Islamic law will not hesitate to bring a solution or a lawful means or way of tackling it on how to tackle such a threat or problem. On this, Abu Huraira reported that the prophet (SAW) said:

“There is no disease that Allah has created, except that he also created its treatment”

Sexual Transmitted Disease (STD) medical examination is not an unknown issue in the history of Islam. This is to the effect of the prophetic tradition reported by Abu Huraira that:

“I was in the company of Allah’s messenger (SAW) when there came a man and informed him that he had contracted to marry a woman of the Ansar. Thereupon, Allah’s messenger (SAW) said: Did you cast a glance at her? He said: NO. He said: Go and cast a glance at her, for there is something in the eyes of the Ansar”

This Hadith therefore shows that there is no harm if parties to a marriage contract are obliged to undergo prenuptial Sexual Transmitted Disease test, because in the above mentioned Hadith the prophet (SAW) allows Muslims to look at their intended partners to determine whether they have any defect.

Also in another Hadith the prophet (SAW) said :

“.....Do not put a patient with a healthy person”

This Hadith indicated that a healthy and non-healthy person should not be put together, and this can be determined only through medical examination.

Therefore, with regard to the legal basis of HIV/AIDS, Hepatitis and Genotype as Sexual transmitted Disease test on the prospective spouses, different opinions have been held by different contemporary Muslim scholars. Some viewed that it is permissible in Shari'ah, while some others opined that it is not permissible.

The Opponent of the Prenuptial STD Test

As earlier stated, some of the Islamic scholars have gone against the permissibility of prenuptial medical examination (which includes HIV/AIDS, Hepatitis and Genotype test). One of these scholars is the Sheikh Abdul-Aziz Bin Baz, the former grand Mufti of the president of the council of Ulama, gave Fatwa with regard to the medical examination (Sexual Transmitted Disease test inclusive) on the prospective spouses. He said to the effect that such is unlawful because of the fact that it may create suspicion among the spouses or parties and suspicion is forbidden in the Shari'ah. He also added that the test might reveal false result. He buttress his assertion with the saying of the Holy prophet (SAW) that:

“Allah says: I am according to how my servant perceives me”

Moreover some scholars also have the same opinion with that of Bin Baz that the test is not permissible when they stated that Islam is always trying to protect peoples' secrets. They backed their argument with the prophetic saying that:

‘Whoever conceals the secret of a Muslim, Allah will conceal his secret in this world and the next’.

This means that Islam expects Muslims to conceal each other's secret. Here they have the impression that undergoing STD (HIV/AIDS, Hepatitis and Genotype testes) before marriage is as good as exposing the secret of the spouses.

With regard to the subject matter, Moreover, Muhammad bin salih Al-uthainim, Abdullahi Ibn Abdul-Rahman Al-jibreen, Abdul-al-karim Zaydan, Muhammad Abd' al-sattar al-shatif, had also held

the opinion that prenuptial medical examination (STD) which HIV/AIDS, Hepatitis and Genotype test is included as unlawful under Islamic law.

They supported their arguments as follows:

The pillar and the conditions for marriage are clearly delineated by the sacred texts adding other preconditions to the marriage are an alteration of Allah's law. Therefore all such conditions will be invalid. The prophet (SAW) said “every condition that is not found in Allah's Book is invalid”. Marriage does not necessitate children. A person marries just to enjoy the other's companionship at hand.

The Scholars Who is generally in Support of the Prenuptial STD Test

Some contemporary Islamic scholars have supported the motion to the effect that the premarital (STD) test on the prospective spouses is Lawful (Halal) or permissible. For example: Abdullahi Ibn Abdulrahman Ibn Jibrin, who was a Saudi based cleric and a member of the powerful senior clerics association and permanent member in the committee for Islamic research and issuing fatwa, who was asked on the Islamic ruling of carrying out medical examination (HIV/AIDS, Hepatitis and Genotype testes inclusive) before marriage and he responded that it is permissible under Islamic law for the proposed spouses to undergo the premarital medical examination if there is fear of an internal disease which can be transmitted to the other party so as to preserve the comfort of the spouses and the stability and tranquillity of life.

Moreover, according to another Islamic scholar in the person of Sheikh Ahmed Kutty, senior lecturer and an Islamic scholar at the Islamic institute of Toronto, Ontario Canada, premarital STD test on spouses is permissible in Islamic law [18]. He further stated that this will help protect the health condition of one of the parties and the expected offspring that will be produce as well. He backed his argument on the prophetic saying that:

“Harm shall not be inflicted nor repocated”

Also Yusuf bin Abdul-Aziz Al-Aqoel in his master theses titled comparative Fiqh stated that its permissible to undergo STD test by the proposed spouses before the marriage is contracted.

Another scholar, Ibn Qayyun All-Jauzi, also share the view that premarital medical examination (HIV/AIDS, Hepatitis, Genotype and other test inclusive) is allowed in Shari'ah if the parties agreed in order to prevent disease. He supported his opinion with the prophetic tradition which was reported by Ka'a bn Zayd that the messenger of Allah (SAW) rejected marrying a lady from the tribe of Baru Ghifarin after realizing that she has a leprosy disease.

In addition, one Egyptian Islamic scholar; Sheikh Muhammad utawalli Sha'arawi, ¹⁶ is also of the view that premarital medical examination (including HIV, Genotype, Hepatitis testes) is permissible in Islamic law, if the parties consented. He based his view according to a prophet tradition where the prophet was reported to have encouraged certain companion to marry a healthy woman.

The Islamic Ruling on the Mandatory Prenuptial STD Test

As stated above, majority of the scholars having looked at the opinions of the both for, and against have come to the conclusion

that, medical testing (STD) before marriage is permissible particularly if there are reasonable justifications, considering the Hadith of the prophet (SAW) which says:

“Let there be neither harm nor reciprocating harm”

However, despite all these, there are also another disagreement among the scholars who went for the view that STD (HIV, Hepatitis, Genotype and other testes) is permissible before marriage, as for whether the test is mandatory or optional.

The first opinion is that it is within the government’s jurisdiction to pass a law obligating prospective marriage partners to undergo a medical examination before they will be permitted to get married permission to marry will not be given unless the parties can produce medical certificates proving they had taken these tests. This is the opinion of Muhammad al-Zuhayli, Nasir al-mayman, Hamadati ma’a-aynayn shabihuna, Abdul-Allah Ibrahim Musa, Muhammad, Shabir, Arif Ali Arif and usman Al-Ashaar.

They based their argument as follows:

“Allah says obey Allah and obey his messenger and those in authority among you”

The argument here is that anything that is in itself permissible can be made mandatory by the Muslim ruler if it determined to be in the public interest.

Allah said: *“Do not throw yourselves into destruction by your hand.*

Some diseases are sexually transmitted and since a medical examination can prevent the spread of such disease to a prospective spouse, it becomes necessary.

Allah says: *“Then Zakariah prayed unto his Lord and Said: My Lord bestow upon me of thy bounty goody offspring. Lo! Thou art the Hearer of prayer.”*

Safeguarding the lineage is one of the six primary objectives of Islamic law. Taking steps to ensure that the future generations are free from generic defect is fully consonant with this objective.

The prophet (SAW) said: *“Do not expose the healthy to the sick”*

This Hadith contains a command to avoid those who are beset with contagious or hereditary diseases. The prophet also said *“flee from a leper as you would flee from lion”*

So the compulsory medical examinations are not a violation of human right or individual freedom. They provide a benefit first to the individual and the society at large. Though his policy might occasionally cause injury to an individual, the juristic principles outlined by Islamic law instruct us to seek out lesser of two evil and allow for individual injury to occur in order to prevent harm from befalling the general public.

Such a policy is in conformity with the Islamic legal axiom that if it is possible to prevent something harmful from taking place, then this is preferable to waiting for it to happen and then having for it to happen and then having to remove it.

It is also in conformity with the legal principle that the mean take the same ruling as the objectives are employed to reach. Since the objective in this case is people’s physical and mental wellbeing, the means enacted to attain it should be considered lawful.

Premarital medical examinations (STD) promote the wellbeing of the future offspring as well as the welfare of the family and society. They spare society social problems and economic burdens. These are goals that are commanded by Islamic law to try and realize.

Premarital medical testing usually tests for one or two disease. Even if ten diseases were tested for, this would not be enough, since there are more than 8000 known hereditary diseases and more are being discovered every day. If we required prospective spouses to be tested for all of these diseases, marriage would become extremely difficult and moral decline would result.

The Need for Prenuptial STD Test

As aforementioned in the earlier discussions STD has so far claimed a lot of lives and it is still spreading around the globe. It has also been proved that sexual intercourse is the most vital way through which HIV, Hepatitis and Genotype is been spread or been transmitted from one person (an infected person) to another (i.e an uninfected person). And on the other hand, marriage is being regarded as a means through which sexual intercourse is legalized between two opposite sexes, and also the way for the procreation and or the preservation of human race or species.

It followed therefore if marriage will be allowed without obliging the proposed spouses to undergo Sexual transmitted Disease test, the diseased will continue multiplying among the societies, as such the need for the premarital STD test on the proposed spouses before the marriage is a very important way for taking the widespread of the epidemic around the globe.

It is because of this pressing need to prevent or reduce the widespread of the disease that some country in the Arab world adopted the rule that the premarital STD test on prospective spouses is mandatory and also precondition for any person intending to marry. These conditions are for instance; Syria, Tunisia, morocco, the U.A.E and Saudi Arabia.

Therefore, Sexual transmitted Disease testing is the essential way of detecting HIV, Genotype, Hepatitis and other sexual transmitted disease are presence in the Human body, through taking the blood sample from the person’s body or by an oral swab, and taken to the laboratory where the examination will be carried out and the result should either be positive or negative, if it is positive, the person is infected but if it is negative, then the person is not infected with HIV.

Therefore, where one of the proposed spouse is found positive, the recommendation is that they should never go together in marriage wedlock with a partner by so doing Sexual Transmitted Disease be prevented from being transmitted from an infected person to an uninfected person. But if the result of both partners revealed negative then there will be no harm in contracting their marriage.

Therefore the needs and or the benefit of premarital Sexual Transmitted Disease test by the proposed spouses are not exhaustive, however for the purpose of this research, the researcher have inter alia attempted to mentioned some of them as follows:-

The premarital Sexual Transmitted Disease testes help in the protecting or preventing uninfected proposed spouses or partner or even the society at large from becoming victim through marriage. The premarital Sexual Transmitted Disease test also helps in

quenching or reducing the widespread of Sexual Transmitted Disease (STD) in the society.

Is also allowed each partner to marriage or proposed spouses to be certain with the health status of his or her spouse to be as far as STD is concern. The premarital Sexual transmitted Disease test can also help the marriage last long since the spouses health status are with regard to Sexual Transmitted Disease known to each other. This is so because where no test has infected person to an uninfected person. But if the result of both partners revealed negative then there will be no harm in contracting their marriage. But if Sexual Transmitted Disease test is carried out on the prospective couple prior to the marriage and on a later date it appeared that one of the partners is one of the Sexual Transmitted Disease infected person, the end result will be the termination of the marriage contract.

Abu Dhabi Islamic scholars (include Muawia E. Ibrahim) support checkup before marriage. The Muslim scholars called for promoting premarital testing for congenital blood diseases to ensure a healthy society. In their unified Friday sermon, imams of mosques across the country said premarital medical check-up is important and it is advisable to encourage prospective spouses to undergo it. "Such testing does not contradict religious teachings. On the contrary, Islam encourages counselling," said the scholars. They urged couples planning to wed to screen for genetic, infectious and blood transmitted diseases to prevent any risk of transmitting any disease to their children.

"Islamic teaching encourages counseling. Prophet Muhammad (peace be upon him) said 'Religion (Islam) is sincere counseling and good advice'," Shaikh Mohammed Najeeb, Imam of Abdullah Bin Kulaib Mosque in Khalidia in Abu Dhabi noted. He said most of the health problems which are widely spreading in societies today were mainly because of negligence and reluctance of people to undergo such tests. He added that this premarital medical checkup must be encouraged among blood-related spouses to avoid the risk for hereditary diseases.

There are genetic diseases widespread in some societies. A person carrying the gene for a sickness is not necessarily going to be sick. However, he can pass on this sickness to his children if he marries a woman who is a carrier of the same gene. Nowadays, premarital testing is considered an important issue, as a result of the increase in the number of children affected with genetic or blood transmitted diseases.

With advancements in genetic engineering opening up new possibilities and with the spread of diseases like HIV, Hepatitis and other sexual transmitted disease there is considerable pressure to require prospective spouses to undergo pre-marital medical exams. The testing is compulsory in the UAE. The authorities concerned have gone further to link getting a legal marriage certificate to undergoing screening for three more diseases, including thalassaemia and sickle-cell anaemia, on top of the present four. Couples, however, need not test negative for any of the diseases, such as HIV, hepatitis B and C, syphilis or tuberculosis, to get married.

According to an interview evidenced that, genotype will help to prevent having sick child, severe form of disease, and pure of offspring. He also added that, genotype, HIV and Hepatitis related disease can be prevented through; proper pre-marital counseling to couples.

According to Dr Amin Al Amiri, co-chair of the Pre-Marital Higher Committee, the requirement is compulsory for everyone including non-nationals. Couples planning to tie the knot in the UAE were previously required to undergo blood tests for HIV, hepatitis B and syphilis, which are sexually-transmitted diseases and an X-ray for tuberculosis, which is airborne. An estimated eight per cent of the local populations are carriers of genetic haemoglobin disorders thalassaemia and sickle cell disease.

Conclusion

From the thorough analysis, of the study, it have been considered that the scholars of the contemporary Muslims societies have varied on their view as to the legality or otherwise of the premarital STD test on the prospective spouses under Islamic law. They all tried their best in buttressing their points of arguments.

However, it is the researcher's submission that the opinion of those scholars who accepted the test is the most acceptable opinion based on their points of argument and the authorities cited by them. Therefore, the researcher further submitted that the premarital STD test on the prospective spouses is legally accepted in Islamic law and some considered it as prerequisites of marriage contract.

Recommendations

From the preceding chapters, the researcher would like to put forward the following recommendations:

1. The ward heads, local government, state and Federal government should enforced upon couples to undergo medical checkup for Sexual Transmitted Diseases as requirement of Marriage in the Country at large.
2. The government, non-governmental organizations and Islamic leaders should collaborate in organizing campaigns so as to create more awareness on the benefits of premarital STD test on the prospective spouses.
3. Scholars should enforced the proposed spouses to present premarital STD test certificate before the marriage will be consummated in order to reduce the rate of sexual transmitted diseases among Muslim Ummah.
4. Regular seminars and workshops should always be organized by the government for the Islamic leaders so that they can be educated on the matter of STD testes.
5. The Islamic leaders should also educate their followers through their public lectures, sermon, and Friday prayers on danger to who did not undergo medical examination.
6. Provision of pre-test counseling to couples to be as well as specialized post-test counseling based on the results can also help.
7. Development and provision of appropriate healthcare resources and infrastructure by the government and or in collaboration with all possible stakeholders (such as religious leaders, academics, experts, health professionals, policy makers, non-governmental organization, community based organizations etc).

8. The health-care resources and infrastructures are for instance: Blood safety and infection control.
9. Medical care and social support including HIV, Hepatitis and Genotype counselors on testing and treatment facilities.

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Submitted: July 10, 2021; Accepted: July 24, 2021; Published: July 30, 2021