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**Critical Analysis of Legal Discourse on Mandatory Pre-Marital Medical Examination**

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## **Abstract**

This article analyses that Premarital Medical Examination (PMC) diagnose and treat unrecognized disorders which will provide help to reduce the transmission of hereditary and contagious diseases to married couples and children. Hence, there is a need for comparative analysis of statutory laws with contemporary Muslim and Non-Muslim jurisdictions which may open the doorway for making regulatory Frameworks and reforms in Pakistani laws. Consanguine marriage is customary practice in Pakistan and Middle Eastern Muslim countries. In consanguine marriages, premarital medical examination leads to safe and healthy marriage life otherwise it will be effective on every perspective of spouse life after marriage. The analysis of Premarital Medical Examination in Pakistan and its permissibility in Shari'ah is necessary which will focus on statutory regulation and the governmental policies which can be brought in legal implementations of PMC. This article is an effort for evaluating the material data recorded by developed Muslim countries, various statutes, state laws, and their court practices the which concludes that changes can be brought in the family laws by way of selecting different opinions of scholars, preaching by the religious scholars and implementation of statutory laws. Protection of Families, the life of children can only be saved from various fatal STDs by amending Medical Laws and Family statutory laws to practice the Premarital Medical Examination.

**Keywords:** Premarital Medical Examination, STDs, AIDS, HIV, FLO

## **Introduction**

The loopholes in the present Family Law Ordinance 1961, focus to diagnose and medicate unrecognized disorders through Premarital Medical Examination by amending Family statutory laws. This paper emphasizes the role of Premarital Medical Examination as marriage is a matrimonial relation between two persons of the opposite sex and gives legalization of procreation of a child. In the Holy Qur'an, the Legal system or laws, the jurists allow Muslim marriages as a legal relationship between a male and female for the establishment of a peaceful society. A marital relationship gives proportionate rights to both husband and wife. Almost half of the legal concepts in Islam revolve around the central focal point of Family laws, the essence of which is marriage (Tawfik et al., 2011). The status of marriage, its effects, and consequences are the most discussed legal issues in Islamic laws. Marriage being the major constituent of family laws in Islam needs to be free of all ambiguities and irregularities. There are many other conditions as well which the scholars recommend being met for concluding a perfect marriage contract. There are no relevant provisions of Premarital Medical Examination in Family statutory laws which need to be amended by considering the need for time (Hirsch et al., 2009). There are various platforms where the Premarital Medical Examination has focused even bill of Premarital Medical Examination is presented before Senate which also based on the need of implementation of PMC in Family Laws (Ahmed et al., 2020).

The rest of this paper is divided into three parts. First, I analyzed the importance of Premarital Medical Screening and identify the enlisted procedure of PMS. Second, I discuss the effectiveness and key barriers to the implementation of

PMS. Third, I analyze the Senate bill (The Premarital Medical Examination, 2016) with the critical analysis of other provinces' proposals for the PMS. Finally, I conclude this paper.

### **Importance of Premarital Medical Screening**

A premarital test is an important health screening for couples who are intended to be married soon, as PMC diagnose some genetic, infectious, and transmissible disease, to prevent their offspring from being at risk of transferring any infection to each other. Premarital screening is testing or medical evaluation for couples who plan to marry early for only certain genetic blood disorders (which includes, thalassemia and sickle cell anemia), for contagious diseases (HIV / AIDS) (Mumtaz et al., 2014). The variety and prevalence sexually transmitting infections (herein after referred as STIs), which affect millions in the world, many wonder how they may adversely affect the ability of a person to conceive and bear a healthy pregnancy. Premarital counseling aims to advise scientifically on the possibility that the above-listed diseases are spread to other partners/spouses or children and to make it possible for partners/spouses to prepare healthy families (Ullah et al., 2017). In the Middle East, the primary goal of a pre-marital examination is the counseling of marrying couples to encourage them to go for premarital medical checkup, by keeping in view about the prevalence of consanguineous marriages in this region, the risk of gender diseases and congenital malformations is higher for children of consanguinity, given their effects on public health, state health care workers at the levels of adults, the family and the community must provide health education on consanguinity primarily. Before marriage, genetic diagnoses and advice should also be provided. The affordability, accessibility, acceptability, and consistency of specialty pre- and pre-marriage centers will suffice to enforce the right to health in this respect genetic counseling and testing services (Hamamy, 2012). Yet human rights standards require planning, carrying out, monitoring, and evaluation in all areas of the premarital screening scheme. Non-discrimination, participation, inclusion, and responsibilities also form part of these principles. The premarital screening system will include all stakeholders-lawmakers (legislators), religious figures (reconsider abort for the fetus suffering from severe congenital malformation), primary health workers, researchers, doctors, geneticists, prevention of and management of diseases in the region, social programs, clinicians, mothers and children's health care, media and activists (Czeizel et al., 1992).

Hepatitis B infection, HIV, HCV, and other sexually transmitted diseases are considered to be a gauge or any method to verify the positive health status of brides and grooms who detect infectious diseases. To determine the risk of raising children with a significant type of illness, it also determines the carriers of genetic diseases. The couple can then choose whether or not to have an infected child in earlier stages because the couple cannot abort their fetus. Segments of the test couple get checked are:

**Firstly**, all routine screening of couples should get a check which includes a total blood test (CBC), a full urine examination, and peripheral blood screening for usual and irregular cells to test. The testing of Rh-negative women by a blood group

(ABO-RH) is important to test for and advise them on the risk of pregnancy.

**Secondly**, it is mandatory for premarital medical that doctors normally prefer routine checkups and screening of the inherited diseases as different tests are designed to conduct which depends on your family history and ancestry. These tests are strongly recommended for first-cousin marriages, consanguine marriages, or relationships by blood, and even for common ancestry which is necessary for the offspring as hereditary diseases are easily transmitted in children after consanguine marriages.

**Thirdly**, Premarital Medical Examination or screening also helps to rule out the carrier status of infectious diseases like HIV, Hepatitis C Virus (HCV), Hepatitis B Virus (HBV), Syphilis and Sexually Transmitted Disease (STD). HIV and HBV are potentially life-threatening. HBV is 50 to 100 times contagious relative to HIV. The World Health Organization (WHO) says. During birth, HBV may be transferred from mother to baby which life is threatening. It is therefore important to protect yourself with a simple screening of these potentially life-threatening diseases. Failure to detect sexually transmitted diseases later leads to complications and squeals, including miscarriage, fetal wastage, ectopic pregnancy, cancer, and death, if the couples do not go for premarital medical examination or infectious diseases.

#### **Effectiveness of Premarital Medical Examination**

The best way for individuals or couples to get details on fitness is to explore premarital health care, which has a profound effect on family life after marriage. The medical tests will enhance their stable marriage and will help them to make an informed marriage, fertility, and health care decisions. Pre-marital psychological research protects the dignity of the family by subscribing to their right to completely recognize their upbringing and any future treatments. PMC's reliable, efficient and useful. Pre-marital health checks also allow young couples to be motivated with their ability to have children without the risk of having an infectious infant, such as sickle cell disease. The doctors and researchers are therefore strongly recommended to identify any infected couples in the pre-marital medical review. Genetic diseases that can be spread by consanguine marriages or blood-related marriages are almost difficult to avoid or treat. Pre-marital tests or screening services must be updated well before the child's childbearing age to warn of the risks associated with offspring or after a married child. Unfortunately, the diagnostic test also stays too late for spouses when they have a relationship with their trait of hemoglobin, they can change their opinions on marriage. Moreover, a woman can be a 'taboo,' since it can affect her social life, and rejects marriage because she won't be married. Diagnoses are therefore approved and accessible before implantation. Premarital Medical Examination and counseling can be effective or the treatment of infectious diseases can be 'solution-oriented.' Based on premarital guidance and solution-oriented counseling, context information provides a basis for designing prevention plans for those who have reported positive contagious disease. Saudi Arabia for example bans the adoption of children for religious purposes and is not deserving of prenatal diagnosis because, except for a fetal deformity, abortion is forbidden. The outcomes of the pre-marital medical test or counseling thus depend on the counselor's method

and the couple's knowledge and attitude. It is sufficient to ensure a fair, open, and understanding of screening programs for the sample population but in general, that the values of culture, race, economy and community prevail. Premarital genetic testing only had marginal effects on the occurrence of  $\beta$ -thalassemia, as the number of  $\beta$ -thalassemia births was not significantly decreased by interventions with a shortage of therapeutic abortions. Success was most evident in programs including free PND and legally accessible therapeutic abortion.

The consanguinity of one-fifth of the world's population living in the Middle East, Western Asia, and North Africa, as well as refugees of these communities now living in North America, Europe, and Australia, is a deeply entrenched social trend. Public awareness of congenital and genetic defect prevention in the offspring leads an increasing number of married couples to seek advice on consanguinity in strongly consanguineous groups (Mumtaz et al., 2014). Primary health practitioners face blood-borne pairs seeking answers to their questions about their offspring's anticipated health risks. Preconception and consanguinity premarital therapy particularly in highly consanguineous communities should be included in the training of health care providers (Alharbi et al., 2015). The preconception of consanguinity genetic advisory services in extremely consanguineous communities is regarded as a central basis for group genetic services. In certain countries and cultures, premarital care is another increasingly important service where the consanguinity levels remain high and selective abortions of infected fetuses are unworkable or unacceptable.

When a consanguineous couple has a genetic treatment clinic because they know that their blood has a genetic disease, a step-by-step procedure aims to build a pedigree and take a detailed family history. Several studies have shown the value of developing an extended family tree (usually 3 generations) as a tool for the detection of family genetic abnormalities and in some cases, for the development of patterns of heritage. If the condition is autosomally recessive inheritance, a suitable clinical and molecular diagnosis is made as far as possible (Al-Arrayed et al., 2007).

In the Middle East, where 1 to 15% of the population has a trait, the prevalence of  $\beta$ -thalassemia is high. The high prevalence (25-60%) of consanguineous marriages, especially among first cousins, contributes significantly to the high prevalence of  $\beta$ -thalassemia in the Middle East. Contractual or common-law marriages increase children's likelihood of inheriting diseases, as closer intercourse increases the risk (Al-Kandari & Crews, 2011).

The WHO supports the prevention and elimination of the burden of  $\beta$ -thalassemia by voluntary genetic screening due to the high burden of  $\beta$ -thalassemia on patients, families, and healthcare systems in the Middle East. In Iran, the total preventive price for 1 case of  $\beta$ -thalassemia was measured at \$100, lower than one year's cost of optimum assistance for  $\beta$ -thalassemia. However, there are also several disadvantages to the implementation of an obligatory screening program. One difficulty is to regulate the entire process of marriage and screening, requiring involvement in a comprehensive and yet convenient public way by various governmental institutions, including the Ministers of Health, Education and Justice, Religion, and Civil Services (Alswaidi et al., 2012).

### **Barriers for the Effectiveness of the Premarital Medical Examination**

The main hurdles to threaten marriage canceling were close to PND and therapeutic abortion barriers (for example, social unacceptability, and lack of information, access, and costs). The another barrier is lack of awareness about adverse effects of Premarital Medical Examination on healthy marriage life. There is non-availability of health care centers where information regarding the preconception of consanguinity genetic advisory services should be provided. Doctors consultancy regarding PME is necessary but unfortunately Medical Departments and boards does not focus on this grey area. A lack of knowledge of PME and its risk on marriage as well as its diagnosis by PME is an important obstacle. There is need of premarital based guidance and solution-oriented counseling, context information provides a basis for designing prevention plans for those who have reported positive contagious disease. Consanguine marriages in Families is considered as the worst barrier due to which genetic diseases can be spread as while residing in Pakistan blood-related marriages are almost difficult to avoid or treat. Moreover, a woman can be a 'taboo,' since it can affect her social life, and rejects marriage because she won't be married. Thus, threats may be related to cancelation of marriage in West Azerbaijan or Saudi Arabia due to an increased perception of Thalassemia and any infectious illnesses that could be fatal in the future for couples (Insight Medical Publishing, 2020).

### **Critical Analysis on of Legal Regulatory Framework in Pakistan**

Children born from consanguineous marriages suffer from a variety of congenital disorders, making them a greater danger to our society. It occurs often in the case of children born out of wedlock between first cousins. An individual who carries a defect in some of the genes associated with some kind of disease marries a person from the same kindred who also shares the defect through certain near relative marriages. This defective gene is passed on to the infant in two copies, and the child develops an inherited disorder. Blindness, cerebral palsy, psychiatric illnesses, thalassemia, physical deformities, hearing and speech impairments, and other hereditary disabilities are examples. In Pakistan, 77% of babies with genetic abnormalities are parents who had inbreeding and those babies have low survival rates. For socio-economic and political development and the smooth operation of the state's bodies, a country's legal structure is important. Human history shows that when there was no structure or collection of rules, it was just the jungle rule that existed and the principle of survival of the fittest. There was a need to create proper rules which treated all citizens fairly, reasonably, and uniformly (Saffi & Howard, 2015). The statute, the rules and regulations, the organizational mechanism, and the organizations that administer them, therefore, constitute a country's juridical system. In many countries, the confusion about their compliance and poor implementation lead to obstacles on their road to growth, development, and prosperity (Rasheed et al., 2019). This is legislation that makes a significant contribution to an egalitarian and fair society in the fight against inequality and the security of the economically disadvantaged and in sharing opportunities so that a legislative system can be very useful in cementing structural inequalities by regulation (Al-Farsi et al., 2014).

The premarital medical examination is a more significant issue. The Khyber Pakhtunkhwa (now the Northwest Frontier Province) Health Preventive Act (Health Preventive Act, 2009) was passed by the provincial assembly, but since then has been kept in limbo. The pediatricians are worried that the law is not applied and contend that, when incorporated with letter and spirit, there are a growing number of thalassemia cases in the province (Mohsen, 2011). The rule, adopted by the Pakistan Pediatric Associations (PPA), aims at initially voluntarily launches an awareness raise search for the suspected couples for thalassemia and hepatitis before they are married. However, no such effort was made to increase public knowledge that compliance with the law is an instrument to decrease the incidence of hepatitis C and thalassemia. In the province, parents of nearly 30,000 patients with thalassemia found it hard for their kids to handle blood transfusion because there was almost no tradition of blood donation in the community. In the end, the children affected by thalassemia die, but the only cure to the disease is to test before marriage.

#### **Implications about Premarital Medical Examination**

The necessity for Pre-marital Health Examination (PHE) implementation in terms of service differs country-to-country. Except in Heilongjiang, China mandates couples to undergo PHE before registering for marriage, and PHE is no longer required for getting a marriage certificate after 2003. Saudi Arabia made it necessary for anyone planning to marry to take PHE in 2003. Couples contemplating formal marriage in Iran are required to go through a series of screening procedures in government-run laboratories. In the United States, several states mandate premarital serologic screening for syphilis, rubella, HIV, and other diseases. PHE is not needed in Taiwan, nor is it covered by National Health Insurance. In Taiwan, just 7-23% of married couples reported having PHE. Couples in Australia are required to undergo premarital screening. The regulation is now in effect in the United Kingdom and China as well. The Doctors and researchers also pointed that the Ministry of Health plans to put in place step-by-step steps to enact the Preventive Health Act (Preventive Health Care Act, 2009), and the Muslim Family Law Act (Muslim Family Law, 1964) also in Pakistan, as a consequence of lack of social acceptability the government was unable to introduce the law immediately. They claimed that social taboos could not automatically push citizens into compulsory testing, and were supposed to initiate this exercise with the participation of politicians, elected officials, and community organizations, initially. The government did not run the volunteer training project, as per the plan in many districts. There are no legal framework due to which citizens have lack of awareness regarding PME. In Pakistan, government should make reforms which can make PME mandatory and in adverse to which the Nikkâh registrar's license shall be annulled in violation of the law if wedlock is solemnized and whoever solemnizes such marriage without Premarital Medical Examination other than Nikkâh registrar shall be fined Rs. 10,000/-. The Local Governments as well as the Department and Community Development needs to issue a circular describing the specific change in amendments in all the Provincial laws (Premarital Screening Test, 2016).

The new changes necessitate a blood test, mandatory to prevent births with disabilities, for the bride and the bridegroom (Yusufzai, 2020). The legal amendments also require the signature of the Nikkahnama document as witnesses by both bride and bride's parents/guardians after medical examination. As Punjab Minister of Health Dr. Yasmeen Rashid has proposed legislation on compulsory thalassemia premarital screening in the province (Weatherall, 2004). The bill is introduced by the name, "The Premarital Blood Screening Act, 2016" in Senate on dated 27th April 2016, which is still pending. It aims to prevent inherited blood disorders and birth defects by requiring a Medical Certificate and premarital Blood Screening Tests before entering into a marriage contract, to create a stable and progressing Pakistani community. The concerned bill will be approved as law which will amend the legal provisions of Muslim Family Laws Ordinance, 1961, Christian Marriage Act, 1871, Parsi Marriage Act and Divorce, 1936, Special Marriage Act, 1872.

### **Conclusion**

Present research paper has focused on the legal discourse of Premarital Medical Examination in Pakistan, Therefore, it is concluded that Premarital Medical Examination should be mandatory like other well-developed countries like Saudi Arabia, Kuwait, Iran, and Iraq, etc. Premarital screening is testing or medical evaluation for couples who plan to marry early for only certain genetic blood disorders and contagious diseases. Pre-diagnosis of any contagious diseases can protect the couples life and they can live a healthy marriage life.

### **Recommendation**

There are some recommendations regarding Premarital Medical Examination which are :The Muslim Family Law Ordinance needs to be amended to prevent genetic disorders in infants which can lead to the destruction of Families. Premarital screening is testing or medical evaluation for couples who plan to marry early for only certain genetic blood disorders and contagious diseases. In Pakistan, legislators have instituted a bill of premarital medical examination which needs to be part of codified Family Law, 1964 and its implementation should be mandatory with Nikkahn as soon as possible. It is appropriate that the programs for filtering should be fair, accessible, and understood by the target population, but, above all, they should meet the prevailing values of culture, ethnicity, economy, and society. Therefore, human rights standards need to require planning, planning to carry out, monitoring, and evaluation in all areas of the premarital screening scheme. The premarital screening system will include all stakeholders-lawmakers (legislators), religious figures (reconsider abort for the fetus suffering from severe congenital malformation), primary health workers, researchers, doctors, geneticists, prevention of and management of diseases in the region, social programs, clinicians, mothers and children's health care, media and activists.

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