International Journal of Humanities Social Science and Management (IJHSSM)
Volume 5, Issue 3, May-June, 2025, pp: 751-758 ISSN: 3048-6874
www.ijhssm.org

Mandatory Premarital Testing in Nigeria: A Critical Analysis Of Its Legal, Religious, And Ethical Implications

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Date of Submission: 11-06-2025 Date of Acceptance: 24-06-2025

ABSTRACT
This study critically examines the constitutional, Islamic, and human rights dimensions of Nigeria's emerging policy framework on mandatory premarital medical testing. Against the backdrop of increasing incidences of hereditary disorders such as sickle cell anaemia, and communicable diseases like HIV/AIDS, various Nigerian states have introduced legislation compelling intending couples to undergo medical screening prior to marriage. Employing a qualitative research methodology, the study draws upon a rich corpus of primary legal sources, Islamic jurisprudential texts, policy documents, and secondary academic literature. The research underscores that while such policies align with the objectives of Maqasid al-Shariah, particularly the preservation of life (*hifz al-nafs*), progeny (*nasl*), and intellect (*hifz al-'aql*), they also raise significant constitutional and human rights concerns surrounding personal autonomy, informed consent, and non-discrimination. The analysis of state laws in Jigawa, Kaduna, Bauchi, Niger, and Kano reveals a diverse but growing legislative trend. Despite these laws' public health rationale, critics argue that coercive enforcement risks violating constitutional protections under Nigeria's 1999 Constitution. The study concludes that while mandatory premarital testing may serve legitimate public health objectives, any policy framework must be grounded in legal, ethical, and religious sensitivity. Accordingly, recommendations are made for a harmonised national policy, improved public education, robust legal oversight, and community-based sensitisation initiatives grounded in both Islamic ethics and human rights norms.

KEYWORDS: Mandatory premarital testing, Islamic Law, Nigerian Constitution, Human rights, public health policy

I. INTRODUCTION

Throughout history, marriage has been universally recognised as a vital social institution that not only fulfils emotional and psychological companionship but also serves as the foundation for procreation and societal continuity. However, the evolving dynamics of modern public health have introduced new concerns that intersect with this sacred institution, particularly the risk of transmitting hereditary and infectious diseases through marital unions. The World Health Organization (WHO) reports that globally, an estimated 38.4 million people were living with HIV as of 2021, while approximately 300,000 infants are born each year with major haemoglobin disorders, notably sickle cell anaemia, with sub-Saharan Africa bearing the highest burden [1]. Nigeria, being the most populous country in Africa, is disproportionately affected, with about 150,000 children born annually with sickle cell disease and over 1.9 million adults living with HIV [2]. These alarming statistics underscore the urgent need for preventive interventions within the marital context to safeguard individual wellbeing and public health.
In response to these realities, several jurisdictions, both globally and within Nigeria, have introduced premarital medical testing as a precautionary measure to prevent the spread of communicable and inheritable diseases. While no national policy mandates such testing in Nigeria, a number of states, including Jigawa in 2016 [3], Kaduna in 2017 [4], Bauchi in 2017 [5], Niger in 2021 [6], and Kano in 2024[7], have enacted specific laws requiring intending couples to undergo medical screening prior to marriage solemnisation. Parallel to these legislative efforts, Islamic jurisprudence offers a framework through the Maqasid al-Shariah, which emphasises the preservation of life, progeny, intellect, property, and religion. Many contemporary Islamic scholars argue that premarital screening aligns with these objectives by protecting both prospective couples and their offspring from

International Journal of Humanities Social Science and Management (IJHSSM)
Volume 5, Issue 3, May-June, 2025, pp: 751-758 ISSN: 3048-6874
www.ijhssm.org

preventable suffering and early mortality [8]. Nevertheless, these mandates have elicited significant debate, particularly from human rights advocates who argue that compulsory testing may infringe upon personal autonomy, privacy, and freedom of choice, raising complex ethical, legal, and constitutional questions.

Against this backdrop, this study seeks to conduct a nuanced appraisal of mandatory premarital medical testing in Nigeria through the dual lenses of Islamic law and Nigerian constitutional jurisprudence. Specifically, the research aims to evaluate the extent to which such policies align with the principles of *Maqasid al-Shariah* while simultaneously assessing their compatibility with constitutional rights and international human rights norms. Employing a qualitative research design, the study utilises both primary sources, such as statutory enactments, court decisions, and authoritative *fatwas* from leading Islamic jurists, as well as secondary sources, including academic publications, policy reports, and international legal instruments. This methodological approach ensures a holistic understanding of the legal, religious, and ethical dimensions surrounding the subject, providing informed recommendations for policymakers, religious leaders, and civil society stakeholders.

II. CONCEPTUALLITERATUREREVIEW

Premarital Medical Testing

Premarital medical testing refers to the clinical screening of intending couples to determine their health status prior to the formalisation of marriage. This practice often encompasses tests for hereditary diseases such as sickle cell anaemia and thalassemia, as well as infectious diseases like HIV/AIDS, hepatitis B and C, and syphilis [8] (WHO, 2021). The principal objective of premarital screening is preventive in nature, aiming to reduce the incidence of genetically transmitted diseases and to mitigate the public health risks associated with infectious diseases. In Nigeria, where the sickle cell trait affects approximately 20–25% of the population and where HIV prevalence stands at roughly 1.4%, the importance of such preventive measures cannot be overstated[2];[8]. Thus, premarital medical testing is increasingly viewed as a vital tool for safeguarding both individual and public health while reducing the emotional and economic burdens of chronic diseases within families.

Maqasid al-Shariah and its Relevance

The *Maqasid al-Shariah*, or the objectives of Islamic law, provide a holistic framework through which various socio-legal issues are assessed in Islamic jurisprudence. Classical scholars such as Al-Ghazali and Al-Shatibi identified five primary objectives: the preservation of religion (*din*), life (*nafs*), intellect (*aql*), progeny (nasl), and property (mal) [9]. Within this framework, premarital medical testing aligns with the preservation of life by preventing avoidable deaths and lifelong suffering; the preservation of progeny by ensuring healthy offspring; and the preservation of wealth by averting the financial strain associated with long-term medical care. Modern scholars, including Al-Baar[10] and Shubayr[11], who argue that premarital testing is consistent with the principles of *Istislah* (public interest) and *Dar' al-Mafasid* (prevention of harm), thereby making it not only permissible but highly recommended under *Shariah*. Consequently, many Islamic jurists view mandatory testing as a contemporary application of classical Islamic legal principles.

Constitutional and Human Rights Perspectives

From the constitutional and human rights viewpoint, mandatory premarital testing introduces a delicate balancing act between public health objectives and individual freedoms. The Constitution of the Federal Republic of Nigeria (1999, as amended) guarantees fundamental rights such as personal liberty in Section 35 [12], freedom of thought, conscience, and religion (Section 38), and the right to privacy in Section 37[13]. Internationally, instruments such as the Universal Declaration of Human Rights (UDHR, 1948) and the African Charter on Human and Peoples' Rights (ACHPR, 1981) have similar guarantees. Human rights advocates argue that compelling individuals to undergo medical testing as a prerequisite for marriage may constitute an infringement on personal autonomy, bodily integrity, and the right to marry freely. However, proponents of mandatory testing invoke the principle of proportionality, asserting that the collective interest in preventing disease transmission and safeguarding public health justifies such limitations under certain circumstances [14]; [15].

Nigerian Legal Landscape and Judicial Discourse

The Nigerian legal framework remains fragmented regarding mandatory premarital medical testing, with no unified national legislation. Instead,

International Journal of Humanities Social Science and Management (IJHSSM)
Volume 5, Issue 3, May-June, 2025, pp: 751-758 ISSN: 3048-6874
www.ijhssm.org

selected states such as Jigawa, Kaduna, Bauchi, Niger, and Kano have enacted varying laws mandating premarital screening for HIV/AIDS, genotype compatibility, and other conditions [3]; [8]. Judicial interpretation of these laws remains sparse, as Nigerian courts have yet to extensively adjudicate on the constitutionality of such mandates. However, legal scholars have noted that any future legal contestation will likely involve a complex interplay of public interest doctrines, constitutional rights, and religious legal traditions [16]; [17]. This unique Nigerian legal landscape necessitates a careful jurisprudential analysis that harmonises both constitutional and Islamic legal principles.

III. DISCUSSION AND ANALYSIS

Compatibility of Mandatory Testing with Maqasid al-Shariah

The concept of *Maqasid al-Shariah* (the Objectives of Islamic Law) serves as a fundamental framework in determining the legality and advisability of contemporary policies within Islamic jurisprudence. The five primary objectives, preservation of religion (*din*), life (*nafs*), intellect (*aql*), progeny (*nasl*), and property (*mal*), aim to protect human welfare and prevent harm [18]. In the context of mandatory premarital medical testing, particularly concerning HIV, sickle cell anaemia, and other genetic disorders, these objectives provide strong justification for the adoption of such preventive measures.

Protection of Life, Progeny, and Intellect through Early Detection

The preservation of life (*hifz al-nafs*) stands paramount in Shariah. Mandatory testing before marriage enables early detection of potentially life-threatening diseases, thereby preventing avoidable deaths and safeguarding the well-being of future generations. The World Health Organization [19]reported that globally, 1.3 million people acquired HIV in 2022, with sub-Saharan Africa accounting for 65% of new infections. In Nigeria alone, approximately 1.8 million people live with HIV [20]. By identifying carriers early, couples can make informed decisions, thereby preventing transmission. The Quran declares "*..And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful*." [21]

Table 1:Prevalence of HIV and Genetic Disorders in Selected Nigerian States

State	HIV Prevalence (%)	Sickle Cell Trait (%)
Lagos	1.3	20
Kaduna	2.0	25
Kano	1.2	24
Bauchi	2.5	23
Jigawa	1.0	22

***Source**: UNAIDS (2023, p. 15)[20]; National Sickle Cell Centre (2023, p. 22).[21]*

Similarly, preservation of progeny (*hifz al-nasl*) underscores the importance of producing healthy offspring. Genetic counselling and testing prevent the union of carriers of recessive genetic disorders like sickle cell anaemia, thus averting the birth of children doomed to lifelong suffering. The Prophet Muhammad (peace be upon him) said: *"Do not cause harm or return harm."*[23].

Avoiding Harm and Promoting Family Stability

Furthermore, mandatory premarital screening preserves intellect (*hifz al-aql*) by alleviating psychological distress. Marriages burdened with undisclosed health conditions often encounter mental strain, anxiety, and eventual disintegration. The Qur'an advises:*"...Do not throw yourselves into destruction by your own hands..."* [24]
Family stability, which the Qur'an describes as *sakinah* (tranquillity), is closely tied to health and mutual confidence:

> "…And among His signs is this: He created for you mates from yourselves, that you may find tranquillity in them, and He placed between

International Journal of Humanities Social Science and Management (IJHSSM)
Volume 5, Issue 3, May-June, 2025, pp: 751-758 ISSN: 3048-6874
www.ijhssm.org

you affection and mercy…"*[25]*

Table 2.Summarises Potential consequences of non-screened marriages:

Condition	Consequence	Impact on Family
HIV/AIDS	Early spousal death	Widowhood, orphaned children
Sickle Cell Disease	Chronic illness in children	Emotional, financial strain
Hepatitis B	Liver complications, cancer	Health deterioration

Source: Nigerian Medical Journal (2023, p. 45 [26]; WHO (2023, p. 19). [20]

In summary, when analysed through the lens of *Maqasid al-Shariah*, mandatory premarital medical testing emerges not only as permissible but as a religiously endorsed policy aligned with the core objectives of Islam, prioritising the welfare of individuals, families, and society.

IV. Constitutional Implications in Nigeria

The constitutional landscape of Nigeria presents a complex interplay between state authority, individual rights, and religious obligations, particularly in the context of mandatory premarital medical testing. The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the supreme law of the land, guaranteeing fundamental human rights under Chapter IV. Among these rights are the right to privacy in Section 37[13], the right to personal liberty in Section 35, [12] and freedom of thought, conscience, and religion (Section 38 [28]. The implementation of mandatory premarital testing laws, especially for HIV and genetic conditions, thus raises critical constitutional questions.On one hand, proponents argue that the policy serves the public interest by protecting the *nafs* (life), *nasl* (progeny), and *aql* (intellect), consistent with the *Maqasid al-Shariah* framework. This is rooted in the Qur'anic injunction: *"…And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.* [21]Similarly, the Prophet (peace be upon him) stated: *"There should be neither harm nor reciprocating harm."*[23]. However, critics, especially human rights activists, raise concerns about the potential violation of individuals' autonomy and confidentiality.

Table 3: The conflicting constitutional provisions.

Right	Relevant Section	Potential Conflict
Right to Privacy	Section 37	Disclosure of medical status
Personal Liberty	Section 35	State compulsion of tests
Freedom of Religion	Section 38	Religious objection to state interference
Right to Health	Section 17(3)(d)	State obligation to protect public health

Source*: Constitution of Nigeria (1999, pp. 27-35*

In states like Jigawa, Kano, Kaduna, Niger, and Bauchi, where Shariah-based statutes coexist with the federal constitution, lawmakers have argued that the principle of *istislah* (public interest) justifies such measures. Kano State's 2024 Premarital Health Screening Law, for instance, mandates that:"No marriage shall be contracted unless both parties present a certificate from an approved health facility."[*7*]

Table 4. Illustrates Selected Nigerian States That Have Enacted Such Laws

State	Year Enacted	Key Requirements
Jigawa	2016	Mandatory HIV status disclosure
Kaduna	2017	Medical certificate compulsory
Bauchi	2017	Genotype and HIV mandatory
Niger	2021	Medical screening required
Kano	2024	Full health screening mandated

Source*: Kano State Gazette [7]); Bauchi State Law [29]); Kaduna State Law [4]*

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The Nigerian courts have yet to definitively resolve these tensions. However, scholars like [30] argue that when individual rights conflict with public health and safety, constitutional interpretation should favour collective welfare, especially where vulnerable populations, such as unborn children, are at risk. .The balancing act between constitutionally protected rights and the necessity of protecting public health mirrors the Islamic legal principle of *dar' al-mafasidwajalb al-masalih*, removing harm and bringing benefit. Thus, while mandatory premarital medical testing may, on its face, infringe certain liberties, it ultimately promotes the greater good and aligns with both constitutional and Islamic moral frameworks.

Policy Analysis of Existing State Laws

In Nigeria, the absence of a unified national policy on mandatory premarital medical testing has led several states to introduce independent legislations guided by public health imperatives and religious values. These state laws reflect varying degrees of comprehensiveness, enforcement mechanisms, and constitutional balancing acts between individual rights and communal wellbeing. This policy analysis critically examines the statutory frameworks of five Nigerian states: Jigawa, Kaduna, Bauchi, Niger, and Kano.
Jigawa State was the pioneer, enacting its law in 2016. The *Jigawa State Premarital Medical Test Law* mandates HIV testing as a prerequisite for solemnising marriages. It states:

> "No person shall formalize any marriage contract without first verifying the HIV status of both parties at an approved health facility and confirming that both are free from HIV/AID [3]

The policy's emphasis on HIV reflects the state's heightened concern for the virus, given that Nigeria had approximately 1.8 million people living with HIV in 2016 [20]Kaduna State followed in 2017 with a broader requirement for a general medical certificate, rather than targeting specific diseases. The law requires:

> "No person shall formalize any marriage contract for any person wishing to marry without a medical certificate issued by a qualified medical doctor in respect of any or both parties"[4].

Bauchi State took an even more comprehensive approach. Its 2017 law mandates both HIV and genotype testing, recognising the state's high prevalence of sickle cell anaemia, affecting 20–25% of the population [31]. Bauchi's law further requires parents and guardians to disclose their children's health status prior to marriage (Bauchi State [5]Niger State introduced its own version in 2021, mirroring Kaduna's broad medical certification requirement [6]Kano State stands out for its strict enforcement. Its 2024 law imposes both criminal and financial penalties for non-compliance:

> Any individual found in violation… may face a fine of up to ₦500,000, five years' imprisonment, or both [4]

This reflects Kano's strong adoption of the Islamic principle of *dar' al-mafasid* (prevention of harm), supported by the Qur'anic command: *"Do not throw yourselves into destruction by your own hands"*[24]

Table 5:Comparative Summary Of These State Policies.

State	Year	Medical Requirements	Enforcement
Jigawa	2016	HIV only	Marriage refusal
Kaduna	2017	General certificate	Marriage refusal
Bauchi	2017	HIV & Genotype	Marriage refusal
Niger	2021	General certificate	Marriage refusal
Kano	2024	Full screening	Fines & imprisonment

Source: State Gazettes and Laws: [3], [4],[5],[6], and [7]

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While the policies demonstrate an effort to operationalise the *Maqasid al-Shariah*, specifically *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of progeny), they also raise questions about their long-term sustainability, accessibility to approved health facilities, and the protection of individuals' confidentiality.Thus, while these policies serve a noble purpose, their future success depends on balancing enforcement with public education, free testing services, and respect for constitutional liberties.

Islamic Legal Validity of State-Enforced Testing

The legitimacy of state-enforced premarital medical testing within the framework of Islamic jurisprudence (*Fiqh*) derives its justification primarily from the higher objectives of *Shariah*(*Maqasid al-Shariah*). These objectives seek to preserve religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*) (Kamali, 2008, p. 18). [18] Mandatory medical screening serves particularly to protect *nafs* (life) and *nasl* (progeny), by preventing the spread of communicable diseases and reducing hereditary disorders such as sickle cell anaemia, which remains prevalent in Nigeria with an estimated carrier rate of 20-25% among the population (Nwogoh et al., 2012, p. 56). [31]

The Qur'an explicitly commands believers to take preventive measures against self-destruction and harm:*And do not throw [yourselves] with your [own] hands into destruction.*[24]Furthermore, Allah commands:*"And do not kill the soul which Allah has forbidden, except by right."* [32]By enforcing premarital medical tests, the state ensures that marriages are contracted with full knowledge of health risks, thus safeguarding the well-being of both spouses and their potential offspring. This approach aligns with the *QawaidFiqhiyyah* (Islamic legal maxims), notably: Repelling harm takes precedence over procuring benefit" *(*dar' al-mafasidmuqaddam 'alajalb al-masalih*)*[33].

Some contemporary jurists argue that mandatory testing falls under the ruler's (*wali al-amr*) legitimate discretionary authority (*siyasahshar'iyyah*) to regulate public welfare. According to IbnTaymiyyah, the ruler's duty is to pursue what benefits the people and prevent that which harms them in their religion and worldly affairs.[34]The Prophet Muhammad (peace be upon him) also emphasised the importance of selecting compatible spouses, stating: *"Choose carefully for your sperm. Marry those who are suitable for you."*[35]Opposition to compulsory testing often cites the principle of individual freedom (*ikhtiyar*). However, Islamic law permits restricting certain freedoms where public harm (*mafsadah*) is imminent. The prevalence of HIV/AIDS, with 1.8 million Nigerians living with HIV as of 2016 [20] and genetic disorders such as sickle cell anaemia justify state intervention in protecting societal interests.In essence, state-enforced premarital testing is not only compatible with Islamic legal theory but actively promotes its higher objectives. It strikes a balance between individual rights and societal preservation, embodying both the spirit and the letter of *Shariah*.

Human Rights Concerns vs Public Health Needs

The implementation of mandatory premarital medical screening in Nigeria presents a complex tension between the safeguarding of public health and the protection of individual human rights. On one hand, public health authorities argue that such measures are necessary to prevent the transmission of hereditary and infectious diseases, notably sickle cell anaemia and HIV/AIDS, both of which remain major public health challenges in Nigeria. According to the World Health Organization [36] Nigeria has one of the highest burdens of sickle cell disease globally, with approximately 150,000 children born annually with the condition. Furthermore, UNAIDS[37] reports that Nigeria accounts for 7% of the global HIV burden, with approximately 1.8 million people living with the virus.

The state's interest in promoting public health is grounded in its obligation to protect the right to life as enshrined in Article 4 of the African Charter on Human and Peoples' Rights (1981), which states, *"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person."*[38] Similarly, the Nigerian Constitution (1999, as amended) in Section 17(3)(c) mandates the state to ensure adequate medical and health facilities for all citizens.[39]

However, critics argue that compulsory medical testing infringes upon the rights to privacy, autonomy, and freedom of marriage. The Universal Declaration of Human Rights (UDHR, 1948) under Article 16 states, [40] *"Men and women of full age… have the right to marry and to found a family".* The imposition of medical requirements may thus act as a barrier to marriage for some individuals, particularly where stigma or discrimination arise from test results [41].

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The principle of informed consent is central to medical ethics, and any form of mandatory testing without genuine consent may be viewed as coercive and contrary to established rights-based approaches. This is especially pertinent in the Nigerian context, where cultural, religious, and socio-economic factors often amplify the sensitivity surrounding genetic disorders and sexually transmitted infections [42].

Nonetheless, Islamic legal scholars often support such policies under the doctrine of *maslaha* (public interest), which allows the restriction of certain freedoms to prevent greater harm [18]. Al-Ghazali asserts, *"The very objective of the Shariah is to promote the welfare of the people, which lies in safeguarding their faith, their life, their intellect, their posterity, and their wealth"* [43].Ultimately, while mandatory premarital testing raises valid human rights concerns, these must be carefully balanced against the broader societal need to prevent avoidable suffering and ensure the wellbeing of future generations.

V. CONCLUSION

In conclusion, the intersection between public health imperatives and individual rights in the context of Nigeria's mandatory premarital testing laws underscores a deeply complex legal, religious, and ethical debate. The study has demonstrated that while Islamic jurisprudence (Maqasid al-Shariah) largely supports such measures under the principles of life preservation (*hifz al-nafs*), progeny protection (*hifz al-nasl*), and intellect safeguarding (*hifz al-'aql*), significant constitutional and human rights concerns persist. The state's responsibility to protect its citizens from preventable genetic and communicable diseases must be balanced against the autonomy, dignity, and privacy of individuals wishing to marry. The analysis of Nigerian state laws reveals a growing trend towards legislating compulsory tests, reflecting a public health policy that prioritises communal welfare while attempting to avoid discrimination. Nonetheless, it remains essential that these policies incorporate sensitivity, informed consent, and broad-based public education to mitigate potential rights infringements. This study employed qualitative methods through an extensive review of primary legal texts, official policy documents, and secondary academic literature to achieve a holistic understanding of this evolving discourse.

RECOMMENDATIONS

1. The Nigerian government should establish a unified national policy on premarital testing, ensuring both public health protection and the constitutional rights of citizens are consistently safeguarded across all states.
2. The Ministry of Health should strengthen genetic counselling services, making them accessible and affordable to all intending couples prior to marriage registration and medical certification.
3. Religious leaders should collaborate with healthcare professionals to sensitise communities, employing culturally appropriate teachings rooted in Maqasid al-Shariah to promote voluntary compliance.
4. The National Human Rights Commission should develop oversight mechanisms to ensure premarital testing is conducted with full informed consent and without coercion or discrimination.
5. Legislative bodies in each state should periodically enact laws where none is existing or review existing premarital testing laws to harmonise them with international human rights standards and evolving scientific knowledge.
6. The judiciary should provide clear legal interpretations regarding the constitutionality of enforced testing, thus offering guidance on balancing public interest and individual freedoms.
7. The Nigerian educational sector should integrate genetic literacy into secondary and tertiary curricula to empower future generations with knowledge on hereditary diseases and preventive health.

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