

INCORPORATING HIV AND GENOTYPE TESTS AS A REQUIREMENT FOR MARRIAGE UNDER ISLAMIC LAW: A CASE FOR PUBLIC POLICY (MASALIH AL-MURSALAH)

By

Associate Professor Kabir M. Danladi¹

Abstract

Marriage under Islamic law is one of the fundamental things though not obligatory but yet attached with many conditions both from the Holy Quran and the *Sunnah* of the Holy Prophet (PBUH). However, the exigencies of modern world have necessitated the Muslim community to think whether or not HIV and genotype test should be included as part of the requirements for valid marriage under Islamic law. This becomes so as a result of high death rate of innocent couples as a result of the infection of the virus. Furthermore, the reproduction of sickle cell anemia offspring after marriage which is attributed to lack of genotype test to determine the matchable group of couples also contributed a lot to this negative development which is leading to severe suffering of the offspring. The objective of this article is to determine whether within the context of public policy in Islamic law (*Masalih Al-Mursalah*) these two tests could be part of the requirements for marriage. Doctrinal method is used and the article recommends that the two tests should be part of the requirements under Islamic law.

Keywords: HIV/AIDS, genotype test, marriage.

1.1 Introduction

Marriage in Islam is not just conducted in vacuum or without stipulated yardsticks. Islamic law has provided detailed steps and procedures to be followed before marriage can be perfected. Ranging from "*Khitbah*" that is the declaration of a man's intention to marry a specific woman and its condition and conditionalities, followed by *Sighah* (the formula) the word or words to be used in describing the offer and acceptance of the marriage, the witnesses to the perfection of the marriage and their qualifications, the *Waliyi* (Guardian) whom to represent the woman and the man and categories of them and finally to the payment of *Sadak* (dowry) and publicity required for the marriage.

Therefore, this paper will give an appraisal to one of these requirements of marriage that "*Sighah*" formula with the view of knowing the conditions attached to it, the required language to be used in perfecting the marriage, and other stipulations that may possibly be attached to the perfection of the marriage apart from the major conditions contained or to be contained during the perfection of the marriage. And also the paper will analyze several views of Islamic scholars regarding stipulations attached to perfection of marriage under Islam.

¹ Lecturer, Department Of Public Law, Faculty Of Law, Ahmadu Bello University Zaria

1.2 Definition of Some Keywords

1.2.1 Marriage

"Marriage is defined as a legal union of one man and woman as husband and wife"². Marriage under Islam is far above union of one man and one woman as husband and wife. The Holy Quran provides "marry the woman of your choice, two, three or four. But if you fear that you cannot maintain justice among them, and then marry only one"³.

Marriage under Islam is therefore regarded as a union of a man to a woman, or women not above four to the exclusion of any other man except the parties involved, which is based on a contract to be agreed upon by the man and woman involved in accordance to the stipulations of Almighty Allah and His messenger Prophet Muhammad (S.A.W.)

1.2.2 "Sighah"

This generally refers to the offer and acceptance of marriage which is known as *Ijab* and *Qabul*. According to *Wl-Imairi*⁴, after the completion of the preliminary steps of the betrothal (*Khitbah*) and the final agreement. Time and place are fixed for concluding the marriage contract that is where the "*Sighah*" perfection of the marriage will take place. The making of the offer and acceptance by the parties concerned.

1.2.3 HIV/AIDS

HIV is a tiny germ called a virus that harms the body. People don't know when they get HIV because they look and feel healthy for some time before they get sick with AIDS. HIV Stand for Human Immune deficiency virus.⁵ In another definition HIV is defined as Human Immune deficiency virus a silent killer. The widely acknowledge cause of AIDS when the virus get into the blood, it attacks the body's defence system which normally protects the body against illness. The duration of time it takes on infected person to fall ill varies and can take between several months to seven years or more than, so an infected person can spread the virus unknowingly.⁶

On the other hand, AIDS is defined as deadly disease you get from HIV which has no cure. HIV slowly hurts the body so that it can't fight simple disease. The person then has AIDS and soon died. AIDS stand for Acquired Immune Deficiency Syndrome.⁷ In another vein the committee on HIV/AIDS A.B.U Zaria⁸ described AIDS as

"When the virus has destroyed the Immune system, the symptoms of AIDS begin to manifest. AIDS stands for

² William Little and H.W. Fowler (1994), *The Shorter Oxford English Dictionary on Historical Principles*. P. 1209. Clarendon Press, Oxford.

³ Holy Quran 3:34.

⁴ El-Imairi M.T. *Personal Status in Islamic Law*, unpublished p. 17.

⁵ See protect your future, by committee on HIV/AIDS, A.B.U, Zaria. *Basic Information for youth students and state on HIV/AIDS Prevention.*

⁶ See *Society for family Health* Op. Cit.

⁷ Protect your future, *Basic Information for Youths, Students and State* Op. Cit.

⁸ Ibid

Acquired Immune Deficiency syndrome at this stage, the body's natural defence system is weak and the infected person is vulnerable and at mercy of all kind of cancer and infections that might not have trouble those not infected by HIV"⁹

According to Amnesty international,¹⁰ the origin of the disease HIV/AIDS is not clear, while some claimed that it originated from a woman having sex with a monkey, others say it is a result of scientific test by the western world to reduce the population of the world particularly blacks, and yet some theorizes that AIDS has to do with witchcraft,¹¹ while other men of God or religious leader perceived the cause or origin of HIV/AIDS to be from God as a form of punishment for the sins of mankind especially those involved in sexual intercourse or extra-marital sexual relationship because not only Islam prohibit illicit sexual intercourse¹²

This uncertainty as regard to where the origin of the disease is, facilitated to the believed of some Nigerians that the disease is not real, and other who believed of the existence of the disease ascribed it to be a political disease. That is why amnesty international attributed these believed by the people on the disease to symptoms of other infections like tuberculosis, body rashes persistent diarrhoea, extreme weight loss anaemia¹³ noticed by this people on the disease its itself.

1.2.4 Genotype

The genotype is the part of the genetic makeup of a cell, and therefore of an organism or individual, which determines one of its characteristics (phenotype).¹⁴ The term was coined by the Danishbotanist, plant physiologist and geneticist Wilhelm Johannsen in 1903.¹⁵

Genotype is one of three factors that determine phenotype, along with inherited epigenetic factors and non-inherited environmental factors. Not all organisms with the same genotype look or act the same way because appearance and behaviour are modified by environmental and growing conditions. Likewise, not all organisms that look alike necessarily have the same genotype.

⁹ Ibid

¹⁰ Report by Amnesty international USA down load from Internet

¹¹ See Babaji, B. *Early Marriage and HIV/AIDS: The Human Rights perspective* p. 17. Being paper presented to National Human Rights Commission at Zaranda Hotel Bauchi State Nigeria

¹² Ibid

¹³ Amnesty International Report Op. Cit.

¹⁴ "Genotype definition - Medical Dictionary definitions". medterms.com.

¹⁵ Johannsen, W. (1903). 'Om arvelighed i samfund og i rene linier', *Oversigt over det Kongelige Danske Videnskabernes Selskabs Forhandlinger*, vol. 3, 247-70. German ed. *Erblichkeit in Populationen und in reinen Linien*. Jena: Gustav Fischer, 1903; Scanned full text. Also see his monograph *Arvelighedslærens elementer* ("The Elements of Heredity". Copenhagen, 1905), which was rewritten, enlarged and translated into German as *Elemente der exakten Erblichkeitslehre* (Jena: Gustav Fischer, 1905; Scanned full text.

One's genotype differs subtly from one's genomic sequence, because it refers to how an individual differs or is specialized within a group of individuals or a species. So, typically, one refers to an individual's genotype with regard to a particular gene of interest and, and the combination of alleles the individual carries¹⁶. Genotypes are often denoted with letters, for example *Bb*, where *B* stands for one allele and *b* for another.

1.3 The Perfection Of Marriage In Islam

When all preliminaries of marriage are completed that is all the necessary valid *Khitbah* were observed by the parties concerned arrangement for marriage will be made, this like any other contract, the place for perfecting the offer and acceptance of the marriage can be done anywhere or place such as house, mosque, office etc. When a particular place is agreed upon and fixed, the representative of the woman (bride) is expected to be present, because they are the ones to make the offer. The Prophet of Allah, Muhammad (S.A.W.) is reported to have said "A woman (bride) cannot be married by herself or by a woman"¹⁷. This therefore means during the perfection of marriage, a bride is expected to be represented by a man and such a man must be an adult and sane. The representative of the bride will now make the offer "*Ijab*" to the groom or his representative(s), who will in response to the offer, make the acceptance (*Gabul*). It should be noted however, that nothing in Islam prevents the groom (man) from being present and representing himself, but the conventional practice particularly in Nigeria, the groom is usually represented too by his people (*Waliyi*). But where the groom chooses to be represented, the representative must also be adult male and not female.

1.4 Conditions of *Sighah*

The fundamental thing or condition in perfection of marriage is that there must be an express pronouncement of offer "*Ijab*" by the representative of the bride. For example, there must be an express pronouncement by the representatives of Ms. A that we offer our daughter to Mr. B for marriage.

1.5 Offer of Marriage

All jurists unanimously agreed that the expression of the offer of marriage (*Ijab*) must connote "marriage" for example *Zawatu* "I have married Ms. A to Mr. B, or I have wedded Ms. A to Mr. B."¹⁸ Such perfection of marriage is valid. But the jurists differ on whether expression of the offer such as I have lend, pledge, donated or sold Ms. A to Mr. B. is valid or not. According to Hambali and Hannfi, no any perfection of marriage is valid unless the expression used in describing the offer is "*Az-zawal*" and "*Aukhatu*",

¹⁶Griffiths AJF, Gelbart WM, Miller JH, *et al.* Modern Genetic Analysis. New York: W. H. Freeman; 1999. Genetics begins with Variation. Available from: [https://www.ncbi.nlm.nih.gov/books/NBK21344/\(see homozygous, heterozygous\)](https://www.ncbi.nlm.nih.gov/books/NBK21344/(see%20homozygous,%20heterozygous))

¹⁷ See Imam Ibn Hajar "Bulugh – Al-Maramin Adilat-Al-Ahkam. Translated into English by Muhileddin Al-Selek, p. 300.

¹⁸ Aliyu, A.I., (1988) *Legal Basis and Objectives of Marriage under Islamic Law*, LL.M Thesis A.B.U. unpublished p. 120.

which means I have married Ms. A. to Mr. B.¹⁹ but Hanafi school of jurists are of the view that expression which signifies offer is valid except expression such as lending (*Ijrah*), pledge (*Rahan*) legalizing (*Ihehal*) and enjoyment (*Mamattur*). On the other hand, Maliki jurist accept the expression such as donation "*Hibah*" as valid offer, in as much as the *sadak* is mentioned. It should be noted, that, this view of Maliki is being practiced in Nigeria where some parents may decide to give a person his daughter, which is popularly referred to as (*Sadaka*) gift but even in such case, the father of the bride who offered her to groom as gift must provide the *Sadak* (dowry) on behalf of the groom and give it to the bride.

1.6 Acceptance of Marriage

After, offer is made by the representative of the bride; the next condition to perfect the marriage is acceptance of such offer which as earlier said can either be by the groom himself or his representative. All jurists except Shafii agreed that the expression that denotes agreement to accept the offer that is expression that I have accepted, "*Wa faqu*" or I have agreed to accept. "*Raditu*", but Shafii does not agree with Maliki, Hambali and Hannafi on this area, to him the groom must come out clearly and state that I have accepted the marriage of Ms. A., before such *Qabul* will be valid.²⁰

Thirdly, the offer and acceptance must be at one (*Majlis*) one seating where there is break in meeting before the *Qabul* acceptance is made the offer is considered to have lapses, this according to Maliki and Shafii, but Hambali and others considered immediacy of acceptance of offer as not a condition if it can be proved that the meeting can be done according to the custom as one and the same.

Fourthly, for the marriage to be perfected by the parties, it is important that the acceptance must correspond with offer, in other words, the parties should not be at cross purposes or cross offer. For example, where the representative of Ms. A. offers her to the representative of Mr. B, and in accepting they said they accepted Ms. C. here automatically there is no corresponding offer and acceptance, and as such no marriage between Mr. B and Ms. A and neither is there any marriage between Mr. B and Ms. C.

Fifthly, the offeror and offeree must hear and understand each other, for example, where the offeror are Yoruba and offeree are Hausa and they don't understand each other's language, the marriage cannot be perfected because neither of the parties understands each other's language.

It must be noted however, that, where due to one person or the other one of the party in the contract is away from the country. Islamic law allows such offer and acceptance to be made vide writing, the process here is that, the husband will be the one to write to the proposed wife informing her of his intention and if such letter will be read and if the representative or wife accept, the marriage will be conducted and considered valid. But where the two parties are present in the same place and are capable of expressing the offer and the acceptance, writing will not be accepted.

¹⁹ Ibid.

²⁰ Ibid.

Finally, offer and acceptance that will make the marriage to be perfect and valid must not be subjected to future happening. For example, the groom accepting the offer subject to acquiring an employment somewhere in future such an accepted will invalidate the marriage and does not make the marriage perfect. The reason here is that his possibility of obtaining an employment is not certain but where the future occurrence relied on is something of certainty, then such acceptance will be regarded as valid. For example, if the offeror said I will marry you my daughter if she reach puberty, and the offeree accepted, this is regarded as valid because of the certainty involved.

1.7 Express And Implied Stipulated Terms Of The Marriage

Since marriage between parties is a social contract, the parties are free to stipulate some terms or condition particularly those conditions that are not prohibited by Almighty Allah and Prophet Mohammed (S.A.W.) and also those that did not fundamentally negate the essence and importance of marriage contract. Unlike in normal contract where implied conditions and warranty are recognized the same thing implies to marriage contract under Islam except that in marriage contract under Islam any condition that negate the legality of marriage will not be accepted.

1.7.1 Implied Conditions

In a marriage contract under Islam, the husband need not to stipulate that the wife must obey him, or must take all necessary directives from him before embarking on anything. For example, that, the wife should not go out to anybody's house including the wife's parents house except with his permission.²¹ These types of conditions need not be stated because they are considered to be implied already in marriage, whether they are expressly stated or not they cannot be severed or changed or to stipulate that the husband must give her place to sleep or feed her, these are implied conditions which must not necessarily be stipulated.²²

1.7.2 Conditions that Derogate the Fundamental Essence of Marriage

There are some essential basic conditions of conducting any marriage under Islam, for example, payment of *Sadak*, publicity, sexual intercourse, maintenance, and divorce. Therefore, where a marriage is contracted under Islam and a condition is stipulated that such marriage will be conducted without paying *Sadak* or sexual intercourse such conditions are not valid and therefore remains void and not of effect to the marriage. Or where a marriage is conducted on the condition that the contract will not

²¹ In one tradition reported by Hafsat the wife of Prophet that a message was sent from her parents that her father was seriously ill, and at that time, Prophet was not around, she replied that she will not move until her husband is back.

²² It is the duty of the husband to take responsibility of the wife's maintenance generally, feeding, clothing, health etc except where it is highly impossible for him to do i.e. due to puberty, then under Maliki, maintenance can be shifted to the wife if she has the means.

be publicized to anybody except between the husband and wife such conditions are not valid.²³

All Islamic jurists unanimously agreed that these type of conditions should not be fulfilled with regards to conditions preventing sexual intercourse and publicity, Maliki is of the view that it is the conditions alone that will not be fulfilled but marriage is still valid.²⁴ Where a marriage is conducted on a condition that the husband shall never divorce the wife, this condition is not valid therefore remains ineffective but the marriage is valid. The Holy Quran provides: "divorce is only permissible twice, after that, the parties should either hold together on equitable terms or separate with kindness"²⁵. By the provision of this above Quranic verse divorce is allowed to Islamic marriage, therefore, for any condition to be stipulated that marriage should be done only on conditions of not divorcing the wife, such condition is therefore going contrary to the words of Almighty Allah²⁶.

1.7.3 Conditions that are Advantageous to the Wife Alone

More often than not, some women do prescribe some conditions to men before marrying them, for example, a woman can bring a condition that the man should not marry another woman, or the man should not take her away from her town or house. According to Umar Ibn Al-Khattab and Hamballi jurists these kinds of conditions must be fulfilled, and if the husband failed to fulfill, the marriage should be dissolved. They relied on the following "o ye who believe fulfill all obligations".²⁷ According to them based on this Quranic provision it is obligatory to the husband to fulfill the obligation.

But it should be noted, however, that not all jurists support this view, Hanafi and Shafii are of the view that the marriage is valid but the conditions are ineffective, null and void, they relied on two prophetic hadiths which says: "Muslims are on their conditions, except conditions that legalizes the unlawful or prohibit the lawful; and; any condition which is not in Allah's book is invalid even if stipulating hundred times".

The Malikis also support this view therefore all conditions that are seriously beneficial to the wife alone should be discouraged particularly here in Nigeria where the followers are Malikis.

1.7.4. Conditions Completely Unlawful (*Haram*)

There are some conditions which if stipulated are completely unlawful themselves and there is no doubt as regards to unanimous agreement of jurists in this area, except that there are some divergent views whether the presence of such conditions also invalidate the marriage, or it is the only conditions that will be disregarded and

²³ Secret marriage between the husband and wife is not allowed, at least publicity to minimum of two persons is required, two adult males.

²⁴ Condition to do away with Sadaq completely makes not only the conditions inoperative but all makes the marriage invalid because no marriage without Sadaq in Islam.

²⁵ Holy Quran 2:229.

²⁶ Holy Prophet Mohammed (S.A.W.) was reported to have said "divorce is the most disliked and detestable of all lawful things in the sight of Allah".

²⁷ Holy Quran 5:1.

marriage allowed to continue. For example, a woman saying that the man must divorce his present wife before the marriage will be conducted this condition is completely illegal (*Haram*) Bukhari and Muslim reported that, Abu of wedding to ask for the divorce of her sister”.

According to Maliki based on this tradition any marriage conducted on this condition is invalid and must be dissolved, provided the husband has not consummated²⁸ the marriage, but where he consummated the marriage, then the marriage should be allowed but the condition are disregarded and in operative.

Hanafi and Hambali jurist have contrary views with Maliki, to them these conditions will not invalidate the marriage, it is the conditions that will be disregarded whether consummation takes place or not. Furthermore, Hanbali jurists differed with Hanafi only on two exceptional conditions that invalidate the marriage, this two conditions are:

- a) **Temporary marriage:** this is conducting marriage on a certain limited period within which it will come to an end.²⁹
- b) Marriage on condition that both parties can divorce the marriage.

Any marriage with the above conditions is void and the conditions completely invalidate the marriage.

Other unlawful conditions that also received a unanimous agreement among jurists that invalidate not only the conditions but also the marriage are marriage of exchange of sister or daughters as *Sadak* for each other. For example, Malam Musa and Yusuf have two sisters, and both of them agreed to marry each other's sister without paying any *Sadak*, considering the exchange of sister as *Sadak (Nikah-al-sighar)*. This type of marriage is completely not allow, the conditions attached are unlawful and makes the marriage invalidated.

Finally is the marriage of triple divorced women on the condition to make her lawful for her husband who gave her the triple divorce (*Nikikal Al-Tahaleel*).³⁰ This practice is predominantly common here in Nigeria, and it is therefore an unlawful condition makes the bride as a borrowed male goat, may Allah curse and curse that former husband for whom such a woman is falsely presumed to be lawful “transmitted by Tirmizhi and Ibn Majah.”³¹

1.8 *Masalih Al-Mursalah*

Masalih al-Mursalah is that act by which men are taken closer to betterment and further away from detriment, even if such act was not passed by the messenger of Allah (S.A.W) or revealed from Qur'an.³²

²⁸ Consummation of marriage is the husband having sexual intercourse with the wife after the marriage contract.

²⁹ The *Shiite immaniyyah* considered temporary marriage as valid and allowed.

³⁰ M.T., El-Imairi Op. cit. p. 20.

³¹ Ibi p. 21.

³² Quoted by al-Qaradawiy, Y (1397) *Shariah at al-Islam Khuluduha wa salaluha lit-Tatbigi fi Kulli zamanin wa Makanmin al maktabah al-Islamiya (Belrut)* P. 25. And also quoted by Othman, M.B. op. Cit p.68.

And according to Hasaballah, *Masalih* is defined as: "the assuming of a matter to be of public benefit by mere reason without tying the necessary elements and attributes (*awsat*) to the case to particular texts"³³

Therefore, if the above is what is considered to be *Masalih al-Mursalah*, it is necessary to consider HIV/genotype test as a matter of public interest and benefit without necessarily making reference to particular texts.

According to Othman,³⁴ *Masalih al-Mursalah*, referred to by Maliki's School of jurisprudence, is not limited to the narrow scope of the *Istihsan* recognized by the Hanafi's School of Jurisprudence, or within the four walls of the doctrine of *Qiyas*, but rather, to all cases that require the application of *Maslahah*. In all such cases, the Maliki's School hold for, and prefer, what is closer to justice, what will bring about goodness. This, according to them, is the ultimate purpose and intent of the law.

Nigerian Muslim community are Maliki's Schools followers, since under Maliki's School, *Maslahah* is allowed not in narrow scope as stated above, then, it is necessary to accommodate the process of HIV/genotype test as a pre-condition for marriage contracts, because it is our believe, that this will serve not only the interest of the contracting parties but also public interest. This kind of problem was not only peculiar to our time, it occurred during the time of companions of the Prophet (S.A.W) and in most case the problems were solved through passing verdicts that were based upon the *Masalih al-mursalah*. For example, Umar passed a verdict that all milk in the market that is adulterated should be completely diluted as a penalty, and to defeat the aim of the cheat³⁵

Aliy (R.A) ordered the burning of the *Zanadiqah*. It is also said that the companions, the successors, and those after them had held that immoral and bawdy persons be exiled from the land to where so ever the community shall be free from their menace.³⁶

According to Othman, the application of the *Siyasat al shari'yyah (Masahih)*, is lawful in all criminal offences. The state possesses the discretion such as the killing of heretic even if they may not be deemed apostates. The *siyasah* ...is the steering of mankind to means of salvation in this world and the next.³⁷

Not only is *Masalih al-Mursalah* used in establish punishments and other rules as stated above, but it has also been used in mitigating, and suspending the punishments for the sake of public interest.³⁸ For example, Umar decided on one occasion that one who kills the paramour of his wife, if he catches him red-handed and the matter is established, is not guilty of an offence Ibn Qayyim in his *Ilam al-Muwaggi* in, relates the case of

³³ Othman M.B. Op. Cit p.68

³⁴ Ibid 69

³⁵ Ibid P. 71

³⁶ Ibid p.72

³⁷ Ibid

³⁸ Danladi, K.M. (2013) Jurisprudential Issues in HIV/AIDS Laboratory Test as a Prerequisite for Marriage Contract under Islamic Law, *Islamic University Journal in Uganda*, Vol. 3 No. 2, p. 45

Umar taking a meal when someone came to him running and holding a blood stained sword. Behind him was other person running. He came and sat by Umar and the others exclaimed.

O Commander of the Muslims, this one has killed our fellow Umar asked the accused: what do you say to that? He replied I struck the things of my wife and if there happened to be anyone between them, and then I killed him. Umar then said to the people "what do you say? They said. He verily struck with his sword that hit between the deceased and the things of his wife Umar, and then look the sword brandished it and returned it to the accused and said. If they repeat it, repeat your act.

And furthermore, the jurists have put off the *hudud* in all cases at war because of the *Masah al-Mursalah*.³⁹ And Umar was reported to have suspended the *hadd* of cutting off the hand after one suspect escaped and apostates. And also suspended the cutting off during a time of famine⁴⁰

From the above examples, we can clearly see that, the use of *Masahih al Mursahah* is not a new thing, Islam is all encompasses. It does not leave anything untouched, even in situation where there no provision in Qur'an, *Sunna* and *Ijma*, other sources like *Qiyas*, *Istisah* are there to tackle such problems. And where the latter cannot cover it, then there exist *Masalih al Mursahah* to solve the problems within the dictates of Islam, this is what makes Islam to be a unique religious other than any religion in the universe. Therefore, HIV/genotype test dilemma should not be any problem at all to the Muslim Community. And above all, this decision if taken is not an individual interest but the generality of the Muslim.

1.9 Conclusion

The article examined and analyzed the perfection of a valid marriage under Islamic law, it is therefore necessary that Muslim should be very careful on the terms and conditions that will form the bases of their marriage, inclusion of any condition that is not allowed may affect the validity of the marriage and at last the parties may not have their desired goals of marrying each other, or if they succeeded with such illegally conditions, they will have opted for staying in perpetual illegal things. Conditions to be adopted should be conditions that are allowed and does not derogate the motive and essence of marriage.

However, from the above analysis of this article, it is clearly shown that attaching HIV/genotype test may not fundamentally derogate major principles of Islamic law bearing in mind that such tests will be conducted to protect the general interest of the

³⁹ Ibid

⁴⁰ See Hasaballah, Usul, P. 167. *Work of al-Bahnasiy*, A.F. (N.D) Madkhal al-figh al-Jingiy al-Islamity Dar-al Shurug (Cairo) P. 128 also Quoted by Othman M.B. Op. Cit.

public (couples) and innocent and unfortunate offspring that severely suffer through lack of genotype test.

Finally, the article recommends that Muslim communities and leaders should be firm in making sure that relevant legislations exist to compel aspiring couples to conduct HIV and genotype test before marriage is conducted.

Secondly, this test should be conducted only in government approved hospitals and medical centres under qualified medical professional personnel.

Thirdly, sanctions should be created for those who violate these requirements when they move ahead and conduct the marriage.