

**THE PRACTICE AND LEGITIMACY OF MISYAR MARRIAGE: A CRITICAL  
ANALYSIS WITHIN ISLAMIC LAW**

*Misyar Evliliğinin Uygulaması ve Meşruiyeti: İslam Hukukunda Eleştirel Bir Analiz*

**A H M Ershad Uddin**

Öğrt. Gör. Dr., Kocaeli Üniversitesi, İlahiyat Fakültesi, Temel Bilimleri Bölümü, Kocaeli,  
Türkiye

Lec. Dr., Kocaeli University, Theology Faculty, Department of Basic Islamic Sciences,  
Kocaeli, Türkiye

ahmershad86@gmail.com; ershad.uddin@kocaeli.edu.tr

ORCID ID: 0000-0002-6270-9117

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## The Practice and Legitimacy of Misyār Marriage: A Critical Analysis within Islamic Law

### Abstract

The family, as an institution dating back to the dawn of humanity, holds a paramount position in the lives of individuals from birth to death, providing them with initial education, guidance, and emotional support. In Islamic jurisprudence, the family is esteemed as a sacred sanctuary akin to a protective fortress. Islamic law places significant emphasis on the family, establishing meticulous and dependable provisions that safeguard the interests of all parties involved, preserving their rights, and ensuring the continuity of generations to foster the establishment and endurance of this vital institution. At the heart of the family unit lies the institution of marriage, which is the foundation upon which society's foundation is built. Families founded upon sturdy ethical principles and values are better equipped to fulfill their expected roles and contribute positively to the broader community. In contrast, families with frail foundations and unstable dynamics can become a burden not only to the family itself but also to the community, ultimately affecting the well-being of individuals within them. In light of these considerations, it becomes imperative to investigate and scrutinize the practice of "misyār marriage," a phenomenon that has gained prominence, particularly in Gulf nations. It has shown inclinations to spread to other Islamic states. This form of marriage has sparked discussions and debates regarding its compatibility with Islamic jurisprudence and its harmony with the desires of individuals under specific conditions. This study aims to unveil the similarities and divergences between misyār marriages and traditional marriages practiced in society, emphasizing examining their legitimacy within the framework of the conditional theory of Islamic family law. Despite historical gaps in understanding this practice, our study aims to evaluate misyār unions compared to established matrimonial norms, shedding light on their dynamics, implications, and societal significance. The research delves deep into contemporary Islamic contexts. It thoroughly examines references from the Qur'an, the Sunnah (traditions and practices) of the Prophet Muhammad, and the opinions of classical and modern Islamic scholars. Throughout this extensive inquiry, the study maintains a critical yet impartial stance in addressing the multifaceted challenges posed by misyār marriage. Furthermore, it seeks to provide an outlook based on conditional theory for assessing the genuineness and validity of misyar marriages in challenging situations, thereby enhancing our comprehension of the distinct dynamics and consequences associated with such unions. This research strives to advance the understanding of the merits and demerits of misyar marriages within Muslim societies. Additionally, it aims to foster constructive discourse and deliberate reflection on the intricacies of Islamic family structures and relationships. Ultimately, this research serves as a bridge, connecting Sharia principles, the perspectives of Islamic scholars, and the evolving landscape of contemporary society, thus enabling a more profound grasp of the adverse effects of misyar marriages rather than their short-term benefits.

**Keywords:** Islamic Law, Misyār, Marriage, Family, Gulf.

### Misyār Evliliğinin Uygulaması ve Meşruiyeti: İslam Hukukunda Eleştirel Bir Analiz

#### Öz

Aile, insanlık tarihinde kökleri derinlere uzanan ve bireylerin doğumundan ölümüne kadar yaşamlarının merkezinde yer alan önemli bir kurumdur. Bu kurum, bireylere hayatları boyunca temel eğitim, rehberlik ve duygusal destek sağlayarak onların gelişimine katkıda bulunur. İslam hukukunda ise aile, koruyucu bir kale gibi kabul edilen kutsal bir mabet olarak yüceltilir. İslam hukuku, aileye büyük bir değer atfeder ve ilgili tüm tarafların çıkarlarını koruyan, haklarını güvence altına alan ve nesillerin devamlılığını teşvik eden titiz ve güvenilir hükümler getirir. Toplumun temelini atan evlilik kurumu, ailenin temel yapı taşıdır. Bu aileler, sağlam etik değerler ve ilkeler üzerine kuruludur ve toplumun beklentilerine uygun hareket ederek daha büyük topluma olumlu katkılarda bulunmaya daha yatkındır. Ancak, zayıf temellere sahip ve istikrarsız dinamiklere sahip aileler, yalnızca aile üyeleri için değil, aynı zamanda toplum için de bir yük olabilir ve sonunda aile içindeki bireylerin refahını etkileyebilir. Bu nedenle, aile kurumu sağlam ve istikrarlı bir temel üzerine inşa edilmelidir, çünkü bu, hem bireylerin hem de toplumun genel refahını etkileyen kritik bir faktördür. Bu bağlamda, özellikle Körfez ülkelerinde yaygınlaşan ve diğer İslam toplumlarına da etki etmeye başlayan "misyar nikahı" uygulamasının daha fazla araştırılması ve derinlemesine analiz edilmesi kaçınılmaz hale gelmiştir. Bu tür evliliğin İslam hukukuna uygunluğu ve belirli koşullar altında bireylerin kişisel istekleri ile uygunluğu üzerine ciddi bir tartışma ve inceleme süreci başlamıştır. Bu konu, İslam toplumlarının geleneksel evlilik normlarına nasıl bir alternatif sunduğunu ve bu uygulamanın İslam hukukunun değerleriyle ne kadar uyumlu olduğunu anlamamız gereken karmaşık bir meseledir. Ayrıca, misyar nikahının toplumsal etkileri ve sonuçları da derinlemesine ele alınmalıdır. Bu geniş çaplı araştırmanın temel amacı, misyar evlilikleri ile geleneksel evlilikler arasındaki benzerlikleri

ve farkları açığa çıkarmak ve bu evlilik türünün İslam aile hukukunun şart teorisi çerçevesinde incelemektir. Tarihsel belirsizliklere rağmen, bu çalışma misyar birlikteliklerini yerleşik evlilik normlarıyla karşılaştırarak, bu evliliklerin dinamiklerini, sonuçlarını ve toplumsal önemini anlamaya çalışmaktadır. Araştırma, çağdaş İslam bağlamını derinlemesine incelemektedir. Bu bağlamda, Kur'an'dan, Hz. Muhammed'in sünnetinden (gelenekler ve uygulamalar) ve klasik ve modern İslam alimlerinin görüşlerinden geniş bir referans yelpazesi kullanılmaktadır. Bu kapsamlı araştırma sürecinde, misyar evliliğinin karmaşıklığına eleştirel ancak tarafsız bir bakış açısıyla yaklaşılmaktadır. Bu araştırmanın temel amacı, misyar evlilikleri hakkında derinlemesine bir anlayış sunmak ve bu uygulamayı çevreleyen daha bilgili ve nuanslı bir tartışmaya katkıda bulunmaktır. Aynı zamanda, zorlu durumlarda misyar evliliklerinin doğruluğunu ve meşruiyetini değerlendirmek için koşullu teori bakış açısı sunmayı hedefler ve bu sayede bu tür birlikteliklerin farklı dinamiklerini ve sonuçlarını daha iyi anlamamıza katkı sağlar. Bu araştırma, Müslüman toplumların misyar evliliklerinin avantajlarını ve dezavantajlarını anlama yolunda ilerlemeyi amaçlar. Ayrıca, İslam aile yapısı ve ilişkilerinin karmaşıklıklarını yapıcı bir şekilde tartışmayı ve düşünmeyi teşvik etmeyi hedefler. Nihayetinde, bu araştırma, Şeriat hükümlerini, İslam alimlerinin bakış açılarını ve çağdaş toplumun gelişen gerçekliklerini birbirine bağlayarak, misyar evliliklerinin kısa vadeli faydaları yerine daha derinlemesine olumsuz etkilerini anlamamıza yardımcı olan bir köprü görevi görür.

**Anahtar Kelimeler:** İslam Hukuku, Misyar, Evlilik, Aile, Körfez.

## Introduction

Marriage plays a vital role in both society and religion. In Islam, its importance is emphasized through clear guidance in the Quran and the Sunnah (Prophet's traditions). Religious marriage serves several essential purposes. Some include ensuring the continuation of human life through having children, maintaining purity by following religious guidelines, mutual support in problem-solving between spouses, and strengthening the bonds of love and harmony. All of these aspects are nurtured within a foundation of love and understanding. In its fundamental tenets, Islam advocates for marriage to be 'permanent' or 'indefinite.'

Islamic scholars have extensively examined the essence of marriage and its associated rules. The concept of family is deeply ingrained in the fabric of human existence. This truth is eloquently captured in the verse: "And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect."<sup>1</sup>

However, within certain Muslim societies, particularly in Arab and Shia-based regions, temporary marriages are practiced under the framework of Islam. These unions are seen as brief connections between a man and a woman. Unlike traditional marriage, they lack the commitment associated with long-term relationships and might not adhere to specific timeframes. Sunni and Shiite Muslims generally agree that temporary marriage was initially allowed by Prophet Muhammad. However, they debated whether the second caliph, Umar, or the Prophet himself later prohibited it.<sup>2</sup>

Misyar differs from mut'a in terms of its formal requirements. In mut'a, the declaration of intent uses words specific to müt'a and its derivatives. Regarding the duration stipulation, mut'a and temporary marriage (a concept addressed by classical jurists who have also explored this type of union under alternate names like secret marriage, marriage of the night, or nikah of daytime) are essentially the same. However, the difference lies in the expressions of intent, as seen in Hanafi jurisprudence. Mut'a marriages are deemed invalid, whereas temporary marriages (as having no time limit is considered an essential condition for its validity) are regarded as corrupt. Examining the meaning and objectives of misyar, it can be argued that although it may not share the exact formal prerequisites as müt'a, it exhibits functional and operational similarities.

<sup>1</sup> al-Rūm 30/21.

<sup>2</sup> Tofol Jassim Al-Nasr, "Gulf Cooperation Council (GCC) Women and Misyar Marriage: Evolution and Progress in the Arabian Gulf," *Journal of International Women's Studies* 12/3 (March 2011), 44.

The inception of misyar can be traced back to the latter part of the 20th century, as misyar was a phenomenon absent in the classical or pre-modern era, which led to inquiries among scholars regarding its legal status. While some scholars approved it, others rejected it, and a subset took a middle stance. Köse (2009) stated that Ibrāhīm al-Khuḍayrī, a judge at the Riyadh High Court, asserts that this form of marriage holds a longstanding tradition within the Najd region of Saudi Arabia. Referred to as the mid-morning marriage (*al-Nikāḥ al-ḍuḥawīyah*), it earns its name from the husband's frequent visits to his wife, predominantly during the morning hours.<sup>3</sup>

## 1. The Concept of Misyār Marriage

"Misyār" finds its roots in "sayr", denoting movement on the ground. It is implied that the verb "Sāra" conveys the action of an individual progressing by walking or stepping forward.<sup>4</sup> al-Fayrūzābādī (2005) explained that the person frequently traverses from his country or homeland; nonetheless, the term also encompasses the notions of departure or journeying.<sup>5</sup> Therefore, "misyār" is distinctly of Arabic origin, not foreign. Conversely, mainly foreign and local expressions are employed in specific regions of Saudi Arabia, particularly in Najd, to allude to daytime visits. Nonetheless, comparable arrangements might exist under diverse names and cultural customs in other countries.<sup>6</sup>

According to al-Qaraḍāwī's (1997) explanation, "misyār" is a vernacular expression in certain Gulf nations. It refers to a temporary passage rather than a prolonged stay.<sup>7</sup> However, misyār marriage involves formalizing a legal contract between a man and a woman who mutually consents to live together without establishing a permanent residence. In an alternate definition, misyār marriage is characterized by the man entering the woman's residence, with the woman not relocating to the man's domicile. Often, this arrangement involves a second wife, where the man already has another wife residing in his household, whom he supports financially.<sup>8</sup>

Quoting Aḥmad Tamīmī, al-Ashqar (2012) noted that a man finalizes his union with a woman through a legally binding contract that satisfies all the necessary components within this marital arrangement. However, the woman relinquishes her entitlement to accommodation and financial support.<sup>9</sup> Within this particular marital dynamic, a man, often already married, agrees to marry another woman. In these unions, women commonly relinquish rights such as *nafaqah* or maintenance, a shared residence, cohabitation, and an equitable time distribution between wives. While not explicitly acknowledged during the contract's inception, these marriages typically remain undisclosed and frequently result in divorce shortly after their establishment. Irfan (2003) discerns that misyār marriage involves a formal contractual agreement and an agreed-upon dowry between the partners. However, it deviates from two fundamental elements typically indispensable for establishing a marital union. These exemptions include relieving the man of his obligation to provide alimony for the wife and exempting him from her right to share a residence with her.<sup>10</sup> However, As per Arif (2003), it meets all the requisites of a marital contract, encompassing al-'Ijāb and al-qabūl (offer and acceptance), witnesses, a guardian, al-Kafā'ah (compatibility), and a pre-established dowry amount

<sup>3</sup> Saffet Köse, "Misyār Nikāḥı -Kur'ân ve Sünnetin Çizdiği Aile Modeli Çerçevesinde Bir Yaklaşım", *İslam Hukuku Araştırmaları Dergisi* 13 (April 2009), 23.

<sup>4</sup> Ibrāhīm Anīs et al., *Al-Mu'jam al-Wasīṭ* (Cairo-Egypt: Dār al-Da'wah, 2004), 467.

<sup>5</sup> Muḥammad ibn Ya'qūb al-Fayrūzābādī, *Al-Qāmūs al-Muḥīṭ* (Beirut-Lebanon: Mu'assasat al-Risālah, 2005), 1/371.

<sup>6</sup> 'Abd al-Malik ibn Yūsuf al-Muṭṭalāq, *Kitāb Zawāj al-Misyār Dirāsah Fiqhīyah Wa'l-İjtimā'īyah Naqḍīyah* (Saudi Arabia: Dār Ibn La'būn lil-Nashr wa-al-Tawzī', 1423), 65.

<sup>7</sup> Yūsuf al-Qaraḍāwī, "Ḥawla Zawāj Al-Misyār", *Majallat Al-Mujtama' al-Kuwaytiyah* 13/1 (May 1997), 13.

<sup>8</sup> al-Qaraḍāwī, "Ḥawla Zawāj Al-Misyār," 31.

<sup>9</sup> Usāmah 'Umar Sulaymān Ashqar, *Mustajaddāt Fiqhīyah Fī Qaḍāyā Al-Zawāj Wa-al-Ṭalāq* (Jordan: Dār al-Nafā'is, 2012), 163.

<sup>10</sup> Irfān ibn Salīm al-'Ashshā Ḥassūnah al-Dimashqī, *Nikāḥ Al-Misyār Wa-Aḥkām al-Ankiḥah al-Muḥarramah* (Beirut-Lebanon: al-Maktabah al-'Aşriyah, 2003), 3.

unless the husband and the misyār wife reach an agreement that she will not possess the rights of financial support, residence, cohabitation, and equal allocation of time, as customary for regular wives.<sup>11</sup>

The scholars' definitions explain that this kind of activity entails a mentally competent adult man entering a lawful marriage with a mentally competent adult woman, permissible within legal bounds. This marriage is formalized with a specified and recognized dowry, accompanied by witnesses satisfying the "*Shahādah*" testimony criteria. It is stipulated that the man refrains from spending full nights with her except on limited occasions and also abstains from shouldering her financial support. This abstention may be a contractual clause or a customary and situational arrangement.

However, *Zawāj misyār* has evolved into a comparable structure to *Zawāj Mut'ah* or temporary marriage, as observed among Shiite communities, with the vital distinction being that *Zawāj Mut'ah* is formalized through mutual agreement and a stipulated timeframe. In contrast, misyār retains an ambiguous nature; even though it is officially contracted as permanent, the couples involved often intend for it to be of short duration.

## 2. The Inception of Misyār Marriage

Upon reviewing jurisprudential texts, it is clear that the historical origins of the misyār marriage concept predate its specific terminology. Instances resembling misyār marriages are evident in historical archives. This is why classical jurisprudential texts address cases where particular conditions were applied, such as forgoing alimony and modifying commitments. For instance, Ibn Qudāmah highlighted misyār -like cases in his "*al-Mughnī*". One instance involved a man marrying a woman with the condition of spending each Friday night together. Another case outlined a man marrying a woman while stipulating a monthly allowance of five or ten dirhams. Likewise, another situation required setting aside specific days for the wife each month. The primary distinction between earlier jurisprudential records and contemporary misyār marriages lies in terminology.<sup>12</sup>

This marriage with the name of "misyār" practice was established many years ago and emerged close to its inception. It gained traction in Saudi Arabia's Qassim region in the central region.<sup>13</sup> However, Fahd Al-Ghunaim was considered the first person in the Middle East to bring this concept. His marriage intermediaries aimed to facilitate marriage for women who missed formal legal opportunities or divorced women who had encountered challenges in prior unions.<sup>14</sup> However, regarding misyār marriage, al-Qaraḍāwī noted that in the past, individuals from Qatar and Gulf countries engaged in maritime professions would spend months away from their homelands and families. Some would marry women in African or Asian countries they visited during their voyages. They would cohabit with these women during their stay in those coastal towns, and upon departing for their own countries, they would leave their temporary spouses. They might return to these women during subsequent travels.<sup>15</sup> Although originating in the Qassim province of Saudi Arabia, the practice of misyār marriage is gaining momentum. Its prevalence is notably increasing in Gulf countries such as Saudi Arabia. However, its popularity extends beyond these regions, reaching countries like Egypt, various North African nations, Indonesia, the Philippines, and other Islamic countries like Malaysia. Additionally, there is a growing trend of misyār marriage in select Western countries where Muslim communities form a minority.<sup>16</sup> Based on research, the history of the misyār marriage dates back no more than fifty years.

<sup>11</sup> Arif Ali, "Zawāj al- Misyār: Ru'yah Islāmīyah", *Tajdid IIUM* 13 (February 2003), 128.

<sup>12</sup> 'Abd Allāh Ibn Muḥammad Ibn Qudāmah, *Al-Mughnī* (Riyadh: Dār 'Ālam al-Kutub, 1997), 7/450.

<sup>13</sup> Köse, "Misyār Nikāhı -Kur'ân ve Sünnetin Çizdiği Aile Modeli Çerçevesinde Bir Yaklaşım-", 23.

<sup>14</sup> al-Muṭṭlaq, *Kitāb Zawāj Al-Misyār Dirāsah Fiqhīyah Wa'l-İjtimā'iyah Naqdīyah*, 78.

<sup>15</sup> al-Qaraḍāwī, "Ḥawla Zawāj Al-Misyār", 8.

<sup>16</sup> Hacı Mehmet Günay, *Gizli Evlilik, Misyar Nikāhı ve Tescil Edilmeyen Nikāhlar (Güncel Dini Meseleler İstisare Toplantısı-V İbadetler ve Aile Hayatı İle İlgili Meseleler)* (Ankara: DİB Yayınları, 2014), 505.

However, viewed similarly but open to diverse interpretations, misyār marriage involves setting a specific dowry aligned with witnessed conditions. This arrangement involves a man spending limited nights with his wife and forgoing ongoing maintenance support. Whether declared in the contract or assumed through custom or law, this raises concerns for adult grooms marrying permissible partners. Aḥmad al-Kurdī, observing agreements within such contracts as Saudi Arabia's Shari'ah judges register them, sheds light on the parties' perspectives. Commonly, women relinquish alimony rights in misyār contracts. The contract is officially recorded despite mutual consent, resembling a standard marriage but omitting explicit conditions. This safeguards wives' and children's rights from potential loss.<sup>17</sup> Considering these combined perspectives, the concept of misyār marriage can be summarized with the following key aspects:

- The contract is formalized with witnesses present.
- A specified mahr (dowry) is established.
- Women willingly relinquish certain rights.
- The agreement outlines that the man is exempted from customary housing and alimony responsibilities. Instead, he spends specific scheduled time with his wife.

### 3. Motivations and Factors Behind Misyār Marriage

Misyār marriage were once rare due to their simplicity and minimal material and social barriers. Women often relied on inheritance for financial stability, which hindered their adoption. However, contemporary circumstances have increased marital challenges, including divorce rates and widowed individuals. Women's employment has also empowered them with independent financial means, altering the landscape. Factors contributing to the rise and popularity of misyār marriages include the increase of unmarried women and widows resulting from divorce or spousal death, particularly among women beyond the typical marriageable age. Additionally, some married men take on additional wives while avoiding complete separation due to issues like sexual complications, illnesses, or social challenges. These factors can be categorized into three main aspects, each of which can be subsequently broken down into several specific points;

#### 3.1. Aspects concerning women

**a) Unmarried, divorced, or widowed women:** Among the pivotal factors contributing to the prevalence and propagation of misyār marriage is the notable presence of numerous women within Islamic societies who have reached marriageable age but remain single or who have previously married but experienced separation due to divorce or the passing of their spouses. This phenomenon has driven the consideration of misyār marriage as a potential solution to assist these women in their future endeavors.<sup>18</sup>

**b) Women's reluctance towards the concept of polygamy:** When a woman is unwilling to accept a husband who is already married to another woman, even if she is older and struggling to find a partner, she might find herself compelled to compromise for the sake of marriage, as seen in the context of present-day misyār marriages.<sup>19</sup>

**c) The necessity for a woman to reside in a separate household from her husband:** Certain women find themselves in a situation where they must live in their family home to fulfill caregiving duties for their parents. She may be their sole provider or have a disability that hinders her from assuming the household responsibilities.<sup>20</sup> Besides this, the women who have entered misyār marriages have typically surpassed the typical marriage age due to factors like pursuing education and establishing careers, resulting in a significant age difference.

<sup>17</sup> al-Muṭṭlaq, *Kitāb Zawāj al-Misyār Dirāsah Fiqhiyah Wa'l-Ijtimā'iyah Naqdiyyah*, 77.

<sup>18</sup> Buthaynah al-Sayyid al-'Irāqī, *Asrār Fī Ḥayāt Al'ānsāt* (Riyadh: Dār Ṭuwayq, 1417), 34.

<sup>19</sup> Justin Thomas, "Traditional 'Temporary Marriages' Are Now a Permanent Problem", *The National* (1 February 2013).

<sup>20</sup> al-Muṭṭlaq, *Kitāb Zawāj al-Misyār Dirāsah Fiqhiyah Wa'l-Ijtimā'iyah Naqdiyyah*, 71.

**d) Freedom:** Women who do not feel financially reliant on others aspire to lead a married life while avoiding the constraints on freedom often associated with marriage.

### 3.2. Causes Related To Men

**a) Certain men possess a heightened pleasure in women:** Some men aspire to polygamy primarily to enhance their enjoyment. In cases where the first wife might be elderly or preoccupied with childcare and household responsibilities, and the man's desires are unfulfilled within that relationship, he might opt for a misyār marriage.<sup>21</sup>

**b) A man's innate need for more than one wife:** Specific men cannot be satisfied with a single woman due to their intense desires and insatiable lust. Consequently, they turn to misyār marriage to fulfill these desires. Also, the man's longing for a second marriage is met with financial constraints, preventing him from pursuing it.<sup>22</sup> Consequently, the woman is willing to forfeit her right to alimony and residence rights.

**c) To Prevent Harm To Their Homes:** Due to their anticipation of the potential consequences that their first wife's reaction might bring, certain men hesitate to declare their second marriage openly. They fear that this could disrupt household harmony and lead to various difficulties. As a result, they opt for misyār marriage as a means to mitigate these concerns. In other meaning, when a husband plans a second marriage but faces resistance from his current spouse or family, he might choose to marry in a distant location, away from his wife and family. This situation legitimizes the woman in the misyār marriage, giving up her right to equal treatment among the spouses.

**d) Misyār Marriage Originating From Merchant Travel:** Misyār marriage emerged due to traders voyaging to distant lands for their livelihoods. They often journey to far-off places, periodically leaving their hometowns for work, sometimes for extended periods. Merchants occasionally married local women to avoid adultery while staying in these towns. Historical records indicate that marriages occurred under these circumstances. Once their business concludes, traders leave their second wives in these towns, as they cannot relocate them. Subsequently, they revisit these towns during their travels, maintaining the arrangement.<sup>23</sup>

### 3.3. Societal Factors

**a) Elevated Dowries and Marriage Expenses:** Numerous men need help to afford the steep expenses of marriage. Conversely, society includes a substantial count of divorced or widowed women, some of whom possess financial means and an aspiration for marital union driven by a longing for virtue and parenthood, even if they contribute financially.<sup>24</sup>

**b) Perception of Misyār Marriage within Society:** Individuals in every society carry aspirations for marriage, guided by their distinct rules and cultural norms. Parents, driven by the desire for their children's happiness, readily make sacrifices. While they endeavor to secure their daughter's well-being, they simultaneously seek partners to safeguard her virtue and honor upon marriage. Hence, parental attitudes and actions revolve around this moral upbringing. Equally important is the parents' emphasis on marriage to ensure lineage continuity.<sup>25</sup> Moreover, the distress caused by unmarried women of marriageable age or post-divorce women weighs heavily on parents. These positive or negative factors contribute to the emergence and progression of misyār marriage.

<sup>21</sup> Mushtaq Lodi, *Islam and the West: The Clash Between Islamism and Secularism* (Texas-USA: Strategic Book Publishing, 2011), 59.

<sup>22</sup> Lisa L. Wynn, "Like a Virgin": Hymenoplasty and Secret Marriage in Egypt", *Medical Anthropology* 35/6547-559 (March 2016), 550.

<sup>23</sup> 'Abd al-Malik ibn Yūsuf al-Muṭṭāq, *Al-Zawāj al-'urfī Dākhl al-Mamlakah al-'Arabīyah al-Sa'ūdīyah Wa-Khārījihā Dirāsah Fiqhīyah Wa-Ijtīmā'īyah Naqdīyah* (Saudi Arabia: Dār al-'Āshimah, 2006), 321.

<sup>24</sup> Emma Green, "The Debate over Muslim College Students Getting Secret Marriages", *The New Yorker* (9 September 2022).

<sup>25</sup> M. Tahir Maloko, "Unregistered Marriage in Islamic Law Perspective: A Critical Study of Islamic Law Compilation", *Al-Mawarid Journal of Islamic Law* 15/1 (August 2015), 59.

**c) Misyār Marriage's Root in Varied Polygamy Laws:** Within the contemporary legal landscape, the evolution of misyār marriage finds its roots in the diverse polygamy regulations. While not universally applicable across Islamic nations, unique legal interpretations of polygamy have directly or indirectly impacted the emergence of misyār unions. Notably, Saudi Arabia, Jordan, and Egypt have adopted lenient approaches to polygamy, facilitated by their legal frameworks, thus paving the way for misyār marriages.<sup>26</sup> Similarly, countries like Syria, Iraq, Morocco, Yemen, and Indonesia emphasize particular polygamy conditions, prompting certain men to opt for misyār arrangements. These criteria aim to prevent family conflicts, necessitating factors such as judicial consent, agreement from the first spouse, financial capability, and health conditions. While polygamy remains regulated in Pakistan, Bangladesh, and India, it is not widely practiced. In contrast, Tunisia and Turkey have imposed a complete ban on it.

**d) Society's Censure of Polygamy and the Adoption of Misyār Marriage:** In certain situations, a man might find himself compelled to pursue a second marriage, yet society might criticize him for indulging in his desires. Often, he is unfairly labeled as driven solely by physical appetite, disregarding his emotional needs. Consequently, he might resort to misyār marriage to shield his union from societal scrutiny and alleviate some of the responsibilities and expenses associated with conventional marriages.<sup>27</sup>

#### 4. The Legal Requirements for Misyār Marriage

Misyār marriage is established through the mutual proposal and consent of the mature as all jurists agreed that the elements of offer and acceptance stand as fundamental pillars of the marriage contract, rendering it only possible for the agreement to be finalized with these two essential elements<sup>28</sup>, mentally sound spouses, often with the guardian's approval<sup>29</sup> and two witnesses' presence<sup>30</sup>. The new wife usually resides in her or her family's residence, while the union remains undisclosed to the husband's family, particularly his first wife and children. In this arrangement, the new wife voluntarily relinquishes certain housing rights, allowing the husband to visit her periodically, whether weekly or with varying frequency, during daylight or nighttime. In the event of either spouse's demise, inheritance rights apply.<sup>31</sup> misyār marriage is intended to be enduring rather than temporary. If the wife bears a child, her lineage to the father is established. If issues arise, the husband can initiate divorce, while the woman may also seek divorce through compensation. This marriage is often documented in Sharī'ah courts, although sometimes it may be informal. Frequently, the contract includes conditions set by the husband that exempt him from certain Sharī'ah-mandated obligations and these conditions may be discussed in Sharī'ah courts or during the customary agreement.

This marriage is formalized through a contract witnessed by persons. However, it grants the husband exemptions from specific responsibilities, such as providing financial support, offering legal housing, and ensuring equitable division of resources among his wives. The wife willingly forfeits these entitlements to address her concerns. She can even forgo spending every night together without financial support and opt for spending only a few designated nights together. She exercises complete freedom and autonomy through her voluntary decision to waive specific rights.<sup>32</sup>

<sup>26</sup> Günay, "Gizli Evlilik, Misyar Nikâhı ve Tescil Edilmeyen Nikâhlar", 519.

<sup>27</sup> al-Muṭṭlaq, *Kitāb Zawāj Al-Misyār Dirāsah Fiqhīyah Wa'l-İjtimā'īyah Naqdīyah*, 73.

<sup>28</sup> Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'ī' Al-Şanā'ī' Fī Tartīb al-Şarā'ī'* (Beirut-Lebanon: Dār al-Kutub al-'İlmīyah, 2003), 2/229; Abū al-Barakāt Aḥmad ibn Muḥammad ibn Aḥmad Dardīr, *Al-Şarḥ al-Şaghīr 'alā Aqrāb al-Masālik İllā Madhhab al-İmām Mālik* (Egypt: Dār al-Ma'ārif, 2008), 2/334.; al-Khaṭīb Shīrbīnī, *Mughnī Al-Muḥtāj İllā Ma'rīfat Ma'ānī Alfāz al-Minhāj* (Egypt: Dār al-Ma'ārif, 1997), 3/139.

<sup>29</sup> İbrāhīm ibn 'Alī ibn Yūsuf al-Fyrwzābādhy al-Şūrāzī, *Al-Tanbīh Fī al-Fiqh al-Şāfi'ī* (Beirut-Lebanon: 'Ālam al-Kutub, 1983), 223.

<sup>30</sup> Muḥammad ibn Aḥmad ibn Abī Aḥmad al-Samarqandī Abū Bakr 'Alā' al-Dīn, *Tuḥfat Al-Fuqahā'* (Beirut: Dār al-Kutub al-'İlmīyah, 1984), 1/131.

<sup>31</sup> Ali, "Zawāj al- Misyār: Ru'yah İslāmīyah", 137.

<sup>32</sup> Barakāt, "Āşifat al-Misyār", *Majallat Al-Waṭan al-'Arabī* 1111 (June 1998), 53; Abdullah, Khālid, "Zawāj al-Misyār", *Majallat Al-Mujtama'* 49 (May 1997), 20.



Furthermore, scholars commonly concur that marriage should not be a private affair but should be celebrated openly. Several hadiths attributed to Prophet Muhammad, peace be upon him (PBUH), emphasize the importance of announcing and publicizing marriages. The Prophet encouraged announcing marriages by pounding drums, playing songs, and even conducting the solemnization ceremony at the local mosque. He urged, "Announce this marriage, hold it in the mosque, and let the drums resound."<sup>33</sup> In another hadith, he emphasized the significance of the announcement, stating, "The distinction between what is lawful (halal) and unlawful (haram) in marriage is the act of beating the drum and making joyful sounds."<sup>34</sup>

## 5. The Legal Ruling and Implications of Misyār Marriage

Considering the proximity of misyār marriage to the research's historical context, there is no clear consensus within classical sources regarding its direct permissibility. However, given its recent prominence, ongoing research is juxtaposed with emerging viewpoints on misyār marriage. Modern jurists exhibit a tripartite division concerning misyār marriage: those who endorse or permit it, prohibit it, and adopt a neutral stance.

### 5.1. Arguments in Support of Misyār Marriage Permissibility

Most scholars consulted or who have written about this form of marriage opine that it aligns with Sharī'ah principles. The subsequent compilation represents their viewpoints: Ibn Bāz's stance is that he does not oppose this marriage arrangement as long as it adheres to the requisite legal foundations of this type of union.<sup>35</sup> Shaykh Naṣr Farīd regards misyār marriage as a valid form of matrimony and substantiates its validity by asserting that it fully satisfies the pillars of Sharī'ah.<sup>36</sup> Shaykh Sa'ūd Shuraym, the imam of the Grand Mosque, does not view the misapplication of misyār marriage as a justification for its prohibition.<sup>37</sup> He argues that potential harm stemming from it could manifest in various ways, and abstaining from this type of marriage might yield more significant societal detriment than allowing it. Ṣāliḥ Sadlān's perspective is favorable, seeing misyār marriage as legally sound.<sup>38</sup> He stipulates that it has no issue as long as it includes the essential components of marriage, such as witnesses, dowry, and mutual consent. Yūsuf al-Qaraḍāwī clarifies that he neither advocates for nor desires misyār marriage. He underscores that while he has not actively supported or defended it, the crucial aspect is the essence of the marriage, not merely its terminology. al-Qaraḍāwī points out historical instances where people marry without disclosing it to their spouse. He equates misyār marriage to customary marriage, with some parallels. He specifies that if four conditions are met—consent from the woman's family, disclosure of relevant information, the absence of undue pressure, and the provision of a dowry, even if later waived—the marriage complies with Islamic legal maxim's rule "*al-'Ibrah fī al-'uqūd lilmaqāṣid wa-al-ma'ānī wa-laysat lil-alfāz wa-al-mabānī*"<sup>39</sup> which means in contractual matters, the emphasis is placed on interpreting and honoring the intention and significance behind the agreement, rather than focusing solely on the literal words and formalities used. He excludes the right to sexual intimacy, which cannot be relinquished as it undermines the contract's intent. Shaykh Maṣṣūr al-Rifā'ī 'Ubayd and Wahbah al-Zuḥaylī, like al-Qaraḍāwī, deem this marriage permissible by Sharī'ah.<sup>40</sup> In addition, Sayyid Ṭaṇṭāwī, the prominent Shaykh of al-Azhar, underscored the legality of misyār marriage by highlighting its adherence to all the requirements outlined in Islamic law (Sharī'ah). He

<sup>33</sup> Muḥammad Ibn 'Īsā Ibn Mūsā Tirmidhī, *Sunan Al-Tirmidhī* (Egypt: Maktabat Muṣṭafā al-Bābī al-Ḥalabī, 1977), 3/398.

<sup>34</sup> Aḥmad ibn 'Alī ibn Shu'ayb Abū 'Abd al-Raḥmān al-Nisā'ī, *Sunan Al-Nisā'ī al-Kubrā* (Beirut: Mu'assasat al-Risālah, 2001), "Kitāb al-Nikāḥ" 6/127 (No. 3369).

<sup>35</sup> Barakāt, "Āṣifat Al-Misyār," 53.

<sup>36</sup> Barakāt, "Āṣifat Al-Misyār," 54.

<sup>37</sup> Bilāl Aḥmad, "Zawāj Al-Misyār," *Majallat Al-Mujtama* 49 (September 1997), 20.

<sup>38</sup> Aḥmad, "Zawāj Al-Misyār," 20.

<sup>39</sup> Muṣṭafā Aḥmad al-Zarqā, *Al-Madkhal al-Fiqhī al-'āmm* (Beirut: Dār al-Qalam, 2004), 2/1080.

<sup>40</sup> Abdullah, "Zawāj Al-Misyār," 21.

maintained that such a marriage is considered valid if a woman consents to relinquish certain marital rights within the framework of *misyār*. Ṭanṭāwī contended that *misyār* marriages are particularly suitable for women who prioritize their independence and desire to reside with their children.<sup>41</sup> The endorsement of its permissibility also comes from Shaykh Ibn ‘Uthaymīn, a Council of Senior Scholars member.

They also presented both verses of Surah an-Nisa<sup>42</sup> and an-Noor<sup>43</sup> as evidence that those considering entering into a *misyār* marriage might be financially constrained and incapable of establishing a new household. *misyār* marriage could serve as a means to enhance their financial status and self-sufficiency, preventing them from engaging in forbidden activities. This form of marriage is designed to avert errors, transgressions, extramarital affairs, and dubious illicit relationships. It eradicates the prevalence of mistresses, casual relationships, and the unrestricted associations seen in Western societies. Furthermore, it contributes to resolving a societal predicament that stresses individuals, households, and the community.

A narration from ‘Ā’ishah recounts that the Prophet asked her to share her nights with Sawdah, underscoring Sawdah's willingness to relinquish her rights for ‘Ā’ishah's sake.<sup>44</sup> Another hadith was narrated by ‘Ā’ishah,<sup>45</sup> where she clarified the meaning of the verse in Surah Nisa.<sup>46</sup> This verse pertains to a scenario where a man harbors a displeasure towards his wife or does not frequently visit her, and there exists a concern that he might contemplate divorcing her. In response, the wife proposes he marry another woman instead of divorcing her. She suggests he can maintain two separate households and divide his time and financial support between the wives as he sees fit. This arrangement grants him complete autonomy in providing for their financial needs and allocating his time among them.

Ṣāliḥ Sadlān has remarked that those who criticize *misyār* marriage as a desperate act devoid of broader marital objectives should recognize that the legitimacy of marriage encompasses three key aspects: the fulfillment of sexual needs, the desire for progeny, and addressing pressing circumstances.<sup>47</sup> A person may pursue one or more of these objectives. If a woman's entitlements involve maintenance, accommodation, and homemaking, she retains the right to waive them, akin to how the wives of the Prophet willingly did. Distinctions between waiving with permission or stipulation are inconsequential, as both are permissible actions. Neither the Quran nor the Sunnah of the Prophet explicitly, implicitly, or indirectly mandates that a woman must assert her claims to maintenance, accommodation, and homemaking. This implies that individual rights do not guarantee the preservation of particular interests and may include compensation for dropping or removing rights such as dowry and alimony in marriage, among others.<sup>48</sup> Indeed, this pertains to women's rights, which can be relinquished through acceptance or intentional waiver. However, one jurisprudential legal maxim states, “*Dar’ al-mufsidah muqaddam ‘alā jalb al-maṣlaḥah*” that preventing mischief is better than bringing benefits.<sup>49</sup> In this context, the harm being averted is the occurrence of adultery. By allowing this marriage, we prevent the potential harm that would arise if it were prohibited. This potential harm holds significance not just for individuals but for society as a whole. Introducing a specific personal benefit (*Jalb Maṣlaḥat*) to a woman, as observed in *misyār* marriage, involves the woman voluntarily relinquishing a portion of her entitlement to financial support and accommodation. The justification for supporting *misyār* marriage is rooted in applying another jurisprudential principle known as the “lesser of two evils” (*akhaḥfu al-dḍararayn*).<sup>50</sup> When considering a woman's situation, the harm associated with her not marrying is considerable. Consequently, marrying her

<sup>41</sup> Aḥmad, “Zawāj Al-Misyār,” 20.

<sup>42</sup> al-Nisā’, 4/138.

<sup>43</sup> al-Nūr, 24/32.

<sup>44</sup> Aḥmad ibn al-Ḥusayn ibn ‘Alī al-Bayhaqī Abū Bakr, *Sunan Al-Bayhaqī al-Kubrā* (Beirut: Dār al-Kutub al-‘Ilmiyah, 2003), 5/292.

<sup>45</sup> ‘Abd Allāh ibn Muḥammad ibn Abī Shaybah, *Al-Kitāb al-Muṣannaf Fī al-Aḥādīth Wa-al-Āthār* (Beirut: Dār al-Tāj, 1989), 4/328.

<sup>46</sup> al-Nisā’, 4/128.

<sup>47</sup> Aḥmad, “Zawāj Al-Misyār,” 20.

<sup>48</sup> Muḥammad Abū Zahrah, *Uṣūl Al-Fiqh* (Beirut-Lebanon: Dār al-Fikr al-‘Arabī, 1997), 323–324.

<sup>49</sup> Muḥammad al-Zuḥaylī, *Al-Nazarīyāt al-Fiqhīyah* (Beirut: Dār al-Qalam, 1993), 226.

<sup>50</sup> al-Zarqā, *Al-Madkhal al-Fiqhī al-‘āmm*, 2/1081.

with certain rights waived is viewed as a lesser harm compared to the alternative of her staying unmarried. This rationale underpins the concept of misyār marriage, as it is the option that incurs less harm than her remaining unmarried.

Furthermore, a jurisprudential legal maxim asserts, "If something cannot be obtained in its entirety, it should not be entirely disregarded" (*mā lā yadriku kulluhu lā yatraku julluhu*).<sup>51</sup> In the case of misyār marriage, the ideal scenario might not be achieved, but this marriage represents a pragmatic choice compelled by life's necessities. The inability to fulfill all desired objectives does not nullify (bātīl) the marriage contract; it might mar (fāsīd) and affect it. In such cases, achieving something, even if it falls short of the ideal, is preferable to having nothing.<sup>52</sup> In addition, the official formal word is optional for the legitimacy of the marriage contract if the proposal is connected to acceptance during the contract council (Majlis), which involves the presence of two witnesses and the wife's guardian. Once these conditions are met, the marriage becomes valid. It is important to note that documenting the contract in writing or an official record is not a prerequisite for the marriage's validity.<sup>53</sup>

However, the eighteenth Convention of Islamic Jurisprudence, held in April 2004, explicitly confirms the acceptability of misyār marriage. This declaration asserts that this new system of marriage contracts must adhere to Islamic law principles regardless of their distinctive labels and descriptions (Sharī'ah). The validity of these contracts is contingent upon meeting the essential requirements and conditions of marriage while avoiding any prohibited elements within the contract.<sup>54</sup>

## 5.2. Arguments Against Misyār Marriage Permissibility

From the perspective of those who disagree with misyār marriage, a prominent group of contemporary scholars arguing that it is invalid and even forbidden within the Islamic jurisprudence framework. They argue that misyār marriages often lack transparency and honesty, as they are often secretly or with limited disclosure to family members and society. It can lead to the exploitation of vulnerable individuals, particularly women, and they may undermine marriage by allowing for temporary and easily dissolvable unions. These scholars advocate for a more cautious and conscientious approach to marital contracts within Islamic law, focusing on transparency, exploitation, the sanctity of marriage, and potential societal consequences. Commenting on the matter, 'Alī Muḥyī al-Dīn al-Qaradāghī (1998) firmly states that misyār marriage should not be regarded as a legitimate form of Islamic matrimony. This perspective resonates with the viewpoint of numerous earlier jurists who expressed reservations about misyār marriages that imposed specific conditions regarding the timing of the union, whether during the day or at night.<sup>55</sup> To support his stance, al-Qaradāghī references verse from the Quran, particularly those found in Surah Rum, where Allah explicitly highlights one of His profound signs - creating spouses from within your own communities. This divine design is intended to bring about tranquility, and Allah has imbued affection and mercy between the spouses as a manifestation of this sign.<sup>56</sup>

Muhammad al-Sharif (1998) asserts, "misyār marriage represents a new innovation (*bid'ah*) conceived by individuals seeking to evade familial obligations and the essential commitments of married life. Marriage should not be reduced to merely satisfying one's sexual desires under a facade of legality. He explicitly states that Allah does not sanction such a practice." He also delved into the central objective of the verse above from Surah Ar-Rum, providing insight into its intended meaning. He stated that concerning the aspects of this contract that render it impermissible, they run counter to the fundamental purposes of marriage, as indicated by the verse. One critical issue is the absence of a stable residence for the concerned

<sup>51</sup> al-Zarqā, *Al-Madkhal al-Fiqhī al-'āmm*, 2/1082.

<sup>52</sup> Yūsuf al-Qaradāwī, "Al-Misyār Bayna al-Mu'ayyid Wa-al-Mu'arid," *Majallat Al-Farḥah* 24 (May 1998), 58.

<sup>53</sup> Maṣṣūr 'Ubayd al-Rifāi, "Zawāj Al-Misyār Irṭibāt Ghayr Kāmil Tubīḥuh al-Ḍarūrah," *Al-Taṣawwuf al-Islāmī* 6 (June 1998), 18.

<sup>54</sup> Ashqar, *Mustajaddāt Fiqhiyah Fī Qaḍāyā Al-Zawāj Wa-al-Ṭalāq*, 179.

<sup>55</sup> 'Alī Muḥyī al-Dīn al-Qaradāghī, "Al-Misyār Bayna al-Mu'ayyid Wa-al-Mu'arid," *Majallat Al-Farḥah* 24 (September 1998), 56.

<sup>56</sup> al-Rūm, 30/21.

woman, who is constantly apprehensive about when her husband might divorce her after his desires and caprices have been satisfied.<sup>57</sup> Among those who object to misyār marriage, Yūsuf Zarrāz contends that it fundamentally disregards Allah's decrees and the legal protections afforded to women's rights in the name of consent and agreement. He argues that this practice involves accepting conditions contradicting established and explicit Islamic laws and nullifying Islamic jurisprudence's well-established and evident provisions.<sup>58</sup>

When examining the practical implications of misyār marriage within society, which essentially involves relinquishing a woman's rights, including her entitlement to alimony, housing, and household support, it becomes evident that individuals are entering into agreements that directly contravene the rights prescribed by Allah and His Messenger, once a legal marriage is contracted. From this perspective, it is asserted that misyār marriage is a form of ignorance-based materialistic union, one that is deemed invalid and unacceptable. Those who advocate for or engage in such marriages, along with those who adopt this practice, are, in essence, treading on dubious ground and deviating from Islam's established norms and principles. It emphasizes that the primary aim of misyār marriage is solely to fulfill a sexual need, whereas a genuine, formal marriage encompasses broader objectives. A formal marriage focuses on providing housing, fostering tranquility, building a family, and strengthening familial bonds. It is seen as a comprehensive institution that nurtures and sustains family relationships beyond mere sexual satisfaction.

Critics label misyār marriage as a secretive union, opposing the Maliki school's view that deems it illegal. They term it "nikah of the secret." According to ibn Juzayy al-Gharnāṭī (2011), if an annulment occurs, it is recommended to disclose it. Hanbali school, however, requires public announcement, which conflicts with secrecy. These Islamic legal views contribute to objections against misyār marriage.<sup>59</sup> Proponents argue that the proper course of action, as per the hadith of Aisha on the authority of the Prophet, is to announce marriages, hold them in mosques, and celebrate with festivities like beating tambourines.<sup>60</sup> This tradition emphasizes the public and communal nature of marriages in Islam. Another hadith emphasizes the rights of married women, with the Prophet stating it is their right over you that you treat them kindly in their clothing and food.<sup>61</sup> Misyār marriage is criticized for seemingly disregarding Allah's provisions and Islamic law regarding women's rights, often under the guise of consent, while agreeing to conditions that conflict with established legal norms. In addition, the Prophet cautioned against the permissiveness of exploiting (vagina) in the name of marriage. Ibn Taymīyah asserts that the permissibility of adultery is not through explicit fornication, as this is universally condemned. Instead, it occurs through marriages that outwardly appear legitimate but, in reality, are deviations from the lawful form of marriage, akin to incest.<sup>62</sup> Moreover, this situation aligns with the Islamic legal maxim known as "*sadd al-dhārā'i*", which advocates for blocking the means to evil to prevent individuals from inadvertently engaging in forbidden actions. Misyār marriage exemplifies how such arrangements can potentially lead to forbidden outcomes without the participants' awareness. al-Rifā'i's example, where a man marries two women secretly, and they bear children who unknowingly become siblings, underscores the need to close these avenues to avoid unforeseen complications and ethical dilemmas.<sup>63</sup> As a result, the consequences of misyār marriage can be far-reaching and problematic. It poses a threat to socially stable families and provides an opportunity for some men to seek additional wives. Critics argue that misyār marriage can be used as an excuse for having legal concubines and mistresses, contrary to the principles of Islamic marriage. Moreover, it operates in

<sup>57</sup> Muḥammad al-Sharīf, "Zawāj Al-Misyār Bid'ah Jadīdah," *Ṣaḥīfat Al-Waṭan al-Kuwaytīyah* (26 January, 1998), 1.

<sup>58</sup> Yūsuf Zarrāz, "Nikāḥ Al-Misyār 'Azm al-Shubuhāt WaFitnat al-Shahawāt," *Jarīdat Al-Sharq al-Awsaṭ* (24 June, 1998), 3.

<sup>59</sup> Muḥammad ibn Aḥmad ibn Juzayy al-Gharnāṭī, *Al-Qawānīn al-Fiqhīyah* (Beirut: Dār al-Kutub al-'Ilmīyah, 2013), 131.

<sup>60</sup> Tirmidhī, "Bāb al-nikāḥ", 3 (No. 1089).

<sup>61</sup> Abū 'Abd Allāh Muḥammad ibn Yazīd Ibn Mājah, *Sunan Ibn Mājah* (Egypt: Dār Iḥyā' al-Kutub al-'Arabīyah, 1999), 1/311.

<sup>62</sup> Abū al-'Abbās Taqī ad-Dīn Aḥmad ibn 'Abd al-Ḥalīm Ibn Taymīyah, *Bayān Al-Dalīl 'alā Buṭlān al-Taḥlīl* (Beirut: al-Maktab al-Islāmī, 1998), 68.

<sup>63</sup> al-Rifā'i, "Zawāj Al-Misyār Irṭibāt Ghayr Kāmil Tubīḥuh al-Ḍarūrah", 16.

secrecy, countering the transparency and openness expected in marriage. This secrecy can inadvertently contribute to the spread of corruption, as individuals may exploit the notion of misyār marriage as a cover for their unethical behavior.<sup>64</sup>

The legal maxim rule "*al-'Ibrah fī al-'uqūd lilmaqāsid wa-al-ma'ānī wa-laysat lil-alfāz wa-al-mabānī*"<sup>65</sup> emphasizes that the essence and objectives behind contracts and actions take precedence over their mere form and wording. In line with this maxim, the law does not permit a marriage where one party is deceived, even if the formalities are technically met. Similarly, it prohibits "*bai al'inah*" or buy-back transaction, that a dubious maneuver through which an individual sidesteps engaging in ribā dealings, which Allah has prohibited. The underlying principle is to prevent actions that contradict the intended purpose and spirit of the law.<sup>66</sup> While al-Qaradāghī distinguishes between conditions before and after a contract. Jurists differentiate between stipulations that contradict the contract's requirements, which render it invalid, and situations where the contract is already completed, and a woman willingly gives up her rights, such as alimony, overnight stay, or division. The Quran instructs the payment of dowry, and most scholars consider contracts invalid when the dowry is negated through conditions. However, it is permissible if the woman willingly foregoes her dowry after the contract.<sup>67</sup> Shaykh Albānī referenced a hadith to argue against the permissibility of misyār marriage. He contended that those who engage in misyār marriages attempt to circumvent the prohibition of forbidden relationships and evade their religious duties. Their intention, Shaykh Albānī suggests, is to alter the proper Islamic approach to lawful marriage by introducing elements that deviate from its core principles of mutual contentment and agreement. He supports his argument by invoking a hadith wherein the Prophet warns against introducing innovations into Islam, indicating that Allah would reject such innovations.<sup>68</sup>

These pieces of evidence are the most compelling points presented by jurists who disapprove of misyār marriage. Their discourse underscores the preference for conducting marriages in mosques, while misyār marriages typically occur outside mosques, precluding public announcements. These scholars contend that marriage must be openly acknowledged, and as a result, they view secret marriages as invalid, citing the evidence above as their basis.

Notable figures who have expressed opposition to misyār marriage include Ibrāhīm Fāḍil al-Dabbū, Shaykh Nāṣir al-Dīn al-Albānī, Jabr al-Fuḍayyat, 'Abd Allāh al-Jubūrī, Muḥammad al-Zuḥaylī, Maḥmūd al-Sarṭāwī, and 'Umar al-Ashqar. They have all voiced objections or reservations regarding this form of marriage.<sup>69</sup>

### 5.3. Scholars with Reserved Views on the Legitimacy of Misyār Marriage

In the third perspective on misyār marriage, certain scholars have refrained from delivering a decisive verdict due to the perceived complexity of the matter, deeming it worthy of further contemplation. These scholars have underscored specific drawbacks associated with misyār marriage, briefly acknowledging the evidence presented by those who favor it. Additionally, they have noted that several renowned scholars have expressed reservations regarding its permissibility. Given its numerous intricacies and potential pitfalls, they stress the need for a comprehensive and meticulous study of misyār marriage. The absence of a definitive ruling from these scholars signifies their reluctance to judge.

<sup>64</sup> "Āṣifat Al-Misyār," 53-55.

<sup>65</sup> al-Zarqā, *Al-Madkhal al-Fiqhī al-'āmm*, 2/108.

<sup>66</sup> al-Sharīf, "Zawāj Al-Misyār Bid'ah Jadīdah," 1.

<sup>67</sup> al-Qaradāghī, "Al-Misyār Bayna al-Mu'ayyid Wa-al-Mu'arid," 57.

<sup>68</sup> Ibn Mājah, *Sunan Ibn Mājah*, 1/7.

<sup>69</sup> Ashqar, *Mustajaddāt Fiqhiyah Fī Qaḍyā Al-Zawāj Wa-al-Ṭalāq*, 234-260.

## 6. Negative Consequences of Misyār Marriage

Misyār marriage, a practice that has gained popularity in recent years, has given rise to many negative consequences, particularly concerning children born from such unions. In Saudi Arabia, the media has begun to highlight the serious issues surrounding the future of children born through misyār marriages, as many husbands involved in such marriages often refuse to acknowledge their offspring. This poses a significant dilemma for these children, who may face challenges establishing their identity and securing their rights.

While misyār marriage has been presented as an alternative to traditional marriages and, in some cases, as a way for unmarried couples to legitimize their relationships within the bounds of Islamic law, it has been widely misused. Reports from Saudi Arabia reveal alarming cases where individuals, including Saudi citizens and expatriate workers, engage in misyār marriages without a genuine commitment to the union. The kingdom's Al-Watan newspaper reported that this has led to many short-lived marriages, with most ending in divorce within weeks or months.<sup>70</sup>

One of the most concerning repercussions of misyār marriages is the plight of children born from these unions. Increasingly, Saudi women find themselves in a predicament where their husbands refuse to acknowledge their children from misyār relationships, leaving these innocent offspring uncertain. In some cases, women are compelled to pursue legal action against their husbands to secure the rights and recognition their children deserve. Such cases disrupt the lives of these children and create additional burdens for the judicial system.<sup>71</sup>

The Human Rights Association in Jeddah has become involved in addressing these complex issues, highlighting many cases where fathers deny their parental responsibilities. The association has initiated multiple cases to establish paternity and secure these children's rights. In one such case, a female citizen complained to her misyār husband, who had failed to provide identification papers for their marriage or child despite living together for several years. This disturbing pattern reveals the dire consequences that can arise from misyār marriages, mainly when children are involved.<sup>72</sup> Moreover, the easy accessibility of online platforms that promote and facilitate misyār marriages has further exacerbated the problem. These platforms encourage and normalize a practice that often lacks the fundamental commitment and responsibilities associated with traditional marriages. The proliferation of such websites and applications has contributed to the commodification of marriage, undermining its sanctity and solemnity.<sup>73</sup>

The adverse effects of misyār marriages are becoming increasingly evident in Saudi society. Children born from these unions face uncertain futures due to fathers who refuse to acknowledge them, and the practice has led to short-lived marriages and a general degradation of the institution of marriage. Addressing these issues through legal and societal means is imperative to protect the rights and well-being of those affected by misyār marriages, particularly the innocent children caught amid these complex situations.<sup>74</sup>

However, Saudi social researcher Abdullah bin Abdul Aziz, Vice President of Al-Imam University, attributes the primary reason for misyār marriage to men seeking sexual pleasure with women after losing their first wives. In misyār marriage, men often gain all the desired rights, which may not align with Sharī'ah law and can strip women of their fundamental human rights. In this context, women are viewed merely as objects to satisfy men's desires within a secretive, house-bound relationship that excludes the possibility of having children. This arrangement can be initiated or terminated at the man's discretion, resembling a transaction led by intermediaries who profit from such relationships. Saudi human rights activist

<sup>70</sup> *The Arab Weekly*, "Saudi Arabia Confronts the Rise of 'misyar' Marriage in a Changing Society" (July 5, 2021).

<sup>71</sup> Russia Today (RT), "'al-Misyār' Yulqā Rawjā Fī al-Sa'ūdiyyah Raghma Mu'āriḍihī" (July 4, 2021).

<sup>72</sup> *Al-Khalij Online*, "Aṭfāl Al-Misyār Bi-al-Sa'ūdiyyah Fatīl Qunbulat Mudammirah Yawāṣil Alishti'āl" (December 2, 2019).

<sup>73</sup> Tariq Al-Maena, "License to Have Multiple Partners without Much Responsibility", *Saudi Gazette* (September 10, 2019).

<sup>74</sup> *Al-Khalij Online*, "Aṭfāl Al-Misyār Bi-al-Sa'ūdiyyah Fatīl Qunbulat Mudammirah Yawāṣil Alishti'āl."

Muhammad al-Sahli affirms the prevalence of a thriving misyār marriage market where women engage in short-term marriages, seeking divorce afterward. They may escape and enter another misyār marriage if divorce is not granted. The secrecy surrounding these unions often leaves the first spouse unaware of these actions.<sup>75</sup>

## Conclusion

The practice of misyār marriage has been a topic of extensive debate within the context of Islamic jurisprudence, and it continues to raise important questions about its legitimacy, ethical implications, and impact on human rights. This discussion aims to provide a comprehensive overview of the arguments favoring and against misyār marriage while addressing human rights.

As an informal form of marriage within Islamic jurisprudence, misyār marriage challenges the formal understanding of marriage. Traditional Islamic marriage emphasizes the sanctity of the union, mutual responsibilities, and the establishment of a stable family unit. In contrast, misyār marriages prioritize the immediate desires and convenience of the parties involved, often at the expense of broader societal and ethical considerations.

One of the fundamental principles in Islamic jurisprudence is preventing harm (*ḍarar*) and promoting benefits (*maṣlahah*). However, examining misyār marriage closely shows that it often brings more harm than benefit. These marriages frequently result in high divorce rates, leaving women vulnerable and diminishing husbands' authority. Pursuing immediate gratification in such marriages can undermine the essential elements of mutual respect, support, and cooperation foundational to a successful Islamic marriage.

Moreover, misyār marriage deviates from the principles of polygamy practiced pretty and justly within Islamic guidelines. It portrays an image of fundamentally unjust polygamy, where women may unknowingly share a husband, and the equality and justice intended in Islamic polygamy are compromised. This distortion of polygamy can significantly negatively affect women's rights within marriage.

From a human rights perspective, misyār marriage raises concerns regarding women's rights. Human rights principles underscore the importance of informed consent and the ability to make decisions freely. In misyār marriages, where secrecy and ambiguity may be prevalent, there is a risk that some women may enter into such arrangements without fully understanding the implications or without genuine consent. This could infringe upon women's rights to autonomy and agency. While it is essential to acknowledge that misyār marriage may have some benefits and features, such as providing solutions for some spinsters, widows, divorced women, and potentially chastening men, these advantages must be weighed against the disadvantages. One significant disadvantage is that misyār marriage often fails to meet the minimum requirements of a woman's rights. Women in such marriages may feel they are not receiving their full rights and responsibilities within the family unit. Additionally, misyār marriage can psychologically impact women, leading to insecurity and potential humiliation, mainly if the husband primarily focuses on personal pleasure rather than fulfilling his responsibilities.

The family dynamics in misyār marriages may also suffer, with reduced affection, mercy, and accommodation due to the husband's absence for extended periods. This can weaken the family structure and negatively affect children's psychological and social development. Furthermore, the lack of documentation in some cases can lead to disputes and the potential loss of rights for the wife.

However, misyār marriage poses complex challenges within Islamic jurisprudence and raises valid concerns about human rights and ethical considerations. While some jurists permit it under specific conditions, it remains a contentious issue, and its permissibility should be limited to those who genuinely require it and have no viable alternatives. Efforts should be made to curb its prevalence despite the lack of absolute certainty regarding its prohibition or invalidity. Ultimately, the sanctity and well-being of

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<sup>75</sup> *Muwāṭin*, "Ba'da 'arḍ Musalsal 'Ḍahāyā Ḥallāl Hal Ghayyarat al-Sa'ūdiyāh Nazratuhā Tujāha Zawāj al-Misyār?" (January 23, 2023).

individuals within the context of marriage should take precedence over any formal contract, and measures should be taken to ensure that the practice aligns with Islamic principles, ethical standards, and human rights principles. Though misyār marriage may present certain advantages, it is crucial to weigh its potential drawbacks and take measures to prevent its improper implementation within society, safeguarding the rights and dignity of all parties involved.

## Declaration

**1. Finance:** The author declares that no finance/incentive was used in the study.

**2. Conflict of Interest:** The author declares no conflict of interest in the study.

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