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Nikāh-e-Misyār: Jurisprudential Opinions and Rulings

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Nikāh-e-Misyār: Jurisprudential Opinions and Rulings

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Abstract:

Misyār marriage, a form of marital contract within Islamic jurisprudence, has been a subject of considerable debate among scholars due to its unique conditions, which differ from traditional marriage norms. This research paper provides an analytical exploration of the jurisprudential opinions and rulings regarding *Misyār* marriage across various schools of thought in Islamic law. The study delves into the origins of *Misyār*, its legal validity, and the conditions under which it is practiced. By examining primary sources such as the *Qur'ān*, *Hadīth*, and classical Islamic legal texts, alongside contemporary fatwas, the paper highlights divergent scholarly views on key issues, including the consent of both parties, financial responsibilities, and the impact of *Misyār* on family and social structures. The paper further addresses ethical and social considerations, questioning whether *Misyār* fulfills the broader objectives of marriage in Islam (*maqāsid al-sharī'ah*), such as companionship, protection, and procreation. It also explores the implications of this type of marriage in modern Muslim societies, where economic pressures and evolving gender roles have influenced its practice. Ultimately, this research aims to present a balanced view by juxtaposing traditional rulings with contemporary contexts, offering insights into how Islamic jurisprudence navigates the complex realities of *Misyār* marriage.

Keywords: *Misyār Marriage, Legal Text, Traditional Rulings, Contemporary Contexts, Family.*

Definition of Misyār Marriage: Language and Idiomatically

Misyār in the linguistic definition taken from the walk, which is to go on the ground, the Arabs say: The man walked walking and marching and process: if he goes, and the path is an exaggerated formula on the weight of the reactant, the man is described by a lot of walking¹, then he took this name and named it this type of marriage, because the man in this marriage walks to his wife at any time he wants, and does not prolong the stay then and does not stay overnight and does not acknowledge, It is as if the marriage of the walker who relieves in his walk of burdens and loads². Some researchers went to the word *Misyār* colloquial word used in the region of Najd in Saudi Arabia in the sense of day visit, and this name was given to this type of marriage, because the man goes to his wife often in daytime visits similar to what is from the visits of neighbours, says Sheikh Qardāwī: "I do not know the meaning of *Misyār*, it is not lexical in what I have seen, but it is a colloquial word common in some Gulf countries, by which they

mean passage and not staying long."³

Idiomatically, this marriage does not define a specific fixed, it is taken from reality and the old jurists did not address it, and contemporary scholars have worked hard to develop a description of it commensurate with the formula of the question in which he asks about this marriage, says Dr. Sa'ad Al-'Anzī: "This marriage has no term when the jurists in the past, but the marriage of Misyār was recently defined as: marriage through which a woman drops some of her legitimate rights by choice".⁴

Sheikh Qarḍāwī defined it as "a legitimate marriage that is distinguished from ordinary marriage by the wife's waiver of some of her rights over the husband, such as not demanding alimony from him, nor staying overnight if he is married".⁵

Wahbah al-Zuhailī: defined it as: "A marriage that takes place between a man and a woman, with affirmative, acceptance, witness testimony and the presence of a *walī*, provided that the woman waives her material rights of housing and alimony for herself and her children if she gives birth, and some of her moral rights, such as the oath to stay overnight between her and her wife, and is satisfied that the man sometimes frequents her".⁶

The Emergence of Misyār Marriage

This marriage originated in the last years of the end of the twentieth century in the Gulf countries, and appeared for the first time in the Qassim region of Saudi Arabia, and then spread there in the central region.⁷

Some date the emergence of Misyār marriage for a period longer than we have mentioned, but it bore other names, and this is what Dr. Ibrahim Al-Khudairi pointed out when he said about this marriage: "It is known in the past in the Kingdom of Saudi Arabia, and they call it in the Najd region Al-Dhahawiya, meaning that a man marries a woman and does not come to her except Duha, and this is from the old".⁸

The reference to the books of jurisprudence finds that there are cases similar to this marriage talk about the condition of dropping alimony and oath, where Ibn Qudamah presented the case of a man who married a woman and the condition that she should stay overnight every Friday night, and another married a woman and the condition that she spend it every month ten dirhams, and another married and the condition on the woman to make her in the month days known.⁹

Reasons for the emergence of Misyār Marriage

First: Reasons related to women:

1. A woman is spinster, divorced or widowed.
2. Many women rejected the idea of polygamy, and this rejection led to men resorting to marriage through Misyār out of concern for the lack of knowledge of the first wife, as well as fear for the entity of his family from shaking.
3. Some women need to stay in their parents' house to take care of their parents, as there may be no breadwinner for them except her, and her guardians want to exempt her and obtain offspring and do not cost the husband anything.

Second: Reasons related to men:

1. The desire of some men to polygamy for the pleasure that he may not find with his first wife, and his keenness not to know his first wife so as not to be affected by this marriage some men resort to Misyār marriage.
2. The unwillingness of some men to take on more burdens.
3. The instability of men due to work, he frequents some cities in official or commercial work and needs during his stay in this country a woman to fortify him.

Third: Reasons related to society:

1. The high cost of dowries and the high costs of marriage, so some men resort to

Misyār marriage, because it is based on mitigation.

2. Society's view with some contempt for the man who desires pluralism.¹⁰ Here we will explain the difference between Nikāh Misyār and some other popular types of marriage to prove that this is a new type of Nikāh.

Misyār Marriage and Customary Marriage

Definition of Customary Marriage: The Journal of Contemporary Jurisprudence Research has defined it as: "A modern term for a marriage contract that is not documented by an official document, whether written or unwritten".¹¹

It is defined as: a marriage contract completed with its legal elements and conditions, not documented by an official government document.¹²

Ruling on Customary Marriage: If the customary marriage was done affirmatively and accepted, witnessed by at least two witnesses and announced, then this legal marriage is valid, even if it is not registered in the official government departments, and if no official document is issued in it, and thus all the scholars who were asked about this marriage issued a fatwa. Among them: Sheikh Jad al-Ḥaq of the scholars of Al-Azhar, Sheikh Yūsuf al-Qardāwī and others.¹³

Aspects of Agreement and Differences

First: Aspects of Agreement:

1. The contract in both marriages has completed all the elements and conditions agreed upon by the jurists, in terms of offer, acceptance, witnesses and guardian.
2. Both marriages entail the permissibility of enjoyment between the spouses, and the proof of parentage and inheritance between them, and entail the same sanctities as the consequences of legal marriage.
3. Both marriages are mostly confidential, especially from the husband's family.

Second: Differences

1. Misyār marriage is often documented in government departments, but customary marriage is never documented.
2. 'Urfi marriage entails all its legal effects, including the right to alimony and overnight stay, while Misyār marriage in which the woman forfeits her right to alimony and overnight stay.¹⁴

Misyār Marriage and Nikāh Mut'ah (Pleasure marriage)

Definition of Mut'ah Marriage: Mut'ah marriage is when a man marries a woman with some money for a certain period, the marriage ends with its termination without divorce, and there is no obligation of alimony or housing, and no inheritance between them, if one of them dies before the end of the marriage.¹⁵ Al-Qurṭubī said: The scholars of the predecessor and successor did not differ that the Mut'ah marriage is for a period without inheritance, and the separation occurs at the expiration of the term without divorce.¹⁶

Ruling on the Mut'ah Marriage: The jurists unanimously prohibit the Mut'ah marriage, and only the Shiites disagreed with them.¹⁷

Differences between Misyār Marriage and Mut'ah Marriage

The Mut'ah marriage is completely different from the marriage of the Misyār, and they meet only on one point, which is that it is not obligatory to maintain and live on the man. The following are some differences outlined between the two:

1. The Mut'ah marriage is temporary at a time other than the Misyār, it is not temporary and its contract is not dissolved except by divorce.

2. In Mut'ah marriage No divorce applies to the woman who is being enjoyed, rather the separation occurs immediately upon the expiration of the agreed-upon period, unlike the Misyār marriage.
3. The guardian and witnesses are not conditions in temporary marriage, unlike the Misyār, the witnesses and the guardian are conditions for validity.
4. Mut'ah does not entail any effect of legal marriage, from the obligation of alimony, housing, divorce, several and inheritance except to prove parentage only, unlike Misyār marriage, which entails all the previous effects except the obligation of alimony, housing and overnight.
5. The one who enjoys the Mut'ah marriage can enjoy any number of women he wants, unlike the Misyār, the man has only the legitimate polygamy, which is four women, even if all of them marry through the Misyār.¹⁸

Ruling on Misyār Marriage

Contemporary scholars differed in the ruling on Misyār marriage, and the outcome of their disagreement is due to three sayings:

- **The First View:** the first view is that the marriage of Misyār is permissible at all, and who said this saying His Eminence Sheikh ‘Abdul ‘Azīz bin Bāz¹⁹, Sheikh Ibn ‘Uthaymīn²⁰, Sheikh ‘Abdul ‘Azīz Al Sheikh, Muftī of the Kingdom of Saudi Arabia²¹, Sheikh ‘Abdullāh bin ‘Abdul Raḥmān Al-Jabrīn²², and the Muftī of the Republic of Egypt Sheikh Naṣr Farīd Wāsel²³, and the former Sheikh of Al-Azhar Dr. Muhammad Sayed Ṭaṭāwī.²⁴
- **The Second View:** the second one is that the marriage of Misyār is permissible with hatred. Those who said this saying are Sheikh Yūsuf al-Qardāwī²⁵, Dr. Wahbah Al-Zuhailī²⁶, Sheikh ‘Abdullah bin Manea²⁷, and Sheikh Sa‘ūd Al-Shuraim.²⁸
- **The Third View:** The third opinion in this regard is that Misyār marriage is forbidden, and those who said that Misyār marriage is not permissible His Eminence Sheikh Muhammad Nāṣir Al-Albānī²⁹, Dr. Muhammad Al-Zuhailī³⁰, Dr. ‘Omar Suleimān Al-Ashqar³¹, Sheikh ‘Abdul ‘Azīz Al-Misnad, Advisor at the Ministry of Higher Education in the Kingdom of Saudi Arabia³², and by him said Abdul Malik bin Yūsuf and ‘Allama Yūsuf Al-Banūrī of the scholars of Pakistan.³³

Reason for Disagreement

The reason for the disagreement in this matter is twofold.

- **First:** The term Misyār is a new term that the questioner interprets to the mufti in more than one way, so the fatwa is on the amount of the question.
- **Second:** The scholars differ in the impact of the consequences of the acts on the ruling of the incident in question, whoever looked at the consequences of Misyār marriage said that it is forbidden, and whoever looked at the image of the contract said that it is permissible.³⁴

Evidence of the Owners of the First Opinion

Allah says in Qur’an:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَتِلْكَ قِيَامٌ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِشَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْرَأَ أَلَّا تَعُولُوا.³⁵

And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But

if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves]. That is more suitable that you may not incline [to injustice].

In this verse, Allah allowed a man to marry two, three and four women, and the Misyār marriage is only a kind of polygamy, even if it takes another name.

Narrated ‘Āisha: Sauda bint Zam`a gave up her turn to me (‘Āisha), and so the Prophet used to give me (‘Āisha) both my day and the day of Sauda.³⁶

This is evidence that it is permissible for a woman to waive her right to the house, as happened to the Mother of the Believers when she voluntarily waived her day to ‘Āisha, may Allah be pleased with her, and the Prophet (ﷺ) acknowledged that.

The Prophet (ﷺ) said: 'O young people! Whoever among you is able to marry, should marry, and whoever is not able to marry, is recommended to fast, as fasting diminishes his sexual power.³⁷

The legality of marriage is three things: the survival of sex, the request for offspring, and the elimination of witr, and a person may intend one or more of them.³⁸

Along with this, the marriage of Misyār fulfilled the conditions of marriage and its pillars, from the offer and acceptance, and witnesses and guardian, and free of impediments to the origin of its validity, and there is no harm in the agreement between the spouses on the issue of alimony.³⁹ We recognize that it is a marriage that meets the elements and conditions, and is free of impediments, but it is necessary to look at the achievement of the legitimate purposes of this marriage in terms of forming a family and raising children, as well as the problems that result from this marriage⁴⁰.

Furthermore, this type of marriage has many interests, as it satisfies the instinct of the spouses and exempts them, and the woman may have a child from it, which undoubtedly reduces the proportion of spinsters and divorced women in society.⁴¹ It was discussed that this marriage does not achieve solutions to these problems, and if it does, they are temporary solutions, because such marriages often end in divorce, so easy marriage is easier to divorce.

Evidence of the Owners of the Second Opinion

Those who hate Misyār marriage inferred, present this verse as evidence:

وَمِنْ آيَاتِهِ - أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ -⁴²

One of His signs is that He created for you husbands from yourselves to live with and He established affection and mercy among you, for there are signs for people who think about it.

This marriage does not achieve the desired goal, which is affection and mercy, but what it achieves is pleasure and humanity only, and marriage in Islam has broader and deeper purposes than this, such as procreation and housing, and the failure to achieve all the desired goals does not cancel the contract, but rather scratches it.⁴³

It was discussed that the Misyār marriage is a legitimate marriage with full conditions and pillars, and it contains affection, mercy and housing, and the end of it is that the woman voluntarily waives some of her rights, such as alimony and overnight stay, to bring herself a greater interest, which is to protect her vagina.⁴⁴

Evidence of the Owners of the Third Opinion

Those who were forbidden to marry Misyār cited the words of God Almighty as evidence “Men are the guardians of women by what Allah has preferred over each other and by what they spent from their wealth”.⁴⁵ Here, God made guardianship for men

over women by two things:

- The first: by what God has preferred to one another.
- Second: With what they spent from their money

Misyār marriage contradicts what Allah has decreed of the right of guardianship over a woman, because he does not spend on her and does not bear her responsibility in housing.⁴⁶ It was discussed that what they mentioned is counterproductive, because what is meant by the Almighty's saying [what Allah has preferred to each other] i.e.: what Allah has assigned to men in terms of endurance and patience with the troubles of responsibility more than women, and Misyār marriage does not override this matter, and it is sufficient in the second matter for a man to pay dowry until it is said that he spent from his money, and for this he deserves guardianship as soon as he enters before the start of the daily alimony.⁴⁷

Secondly, they reasoned that this contract may be used as a pretext for corruption, as some women may use it as a means of committing immorality on the pretext that they are married through Misyār, so it must be prevented in order to block pretexts, even if it is complete with the elements and conditions by analogy with the marriage of the analyst.⁴⁸ It was discussed that the exploitation of Misyār marriage by some women or men to commit obscenity does not mean that it is forbidden, as corrupt women can achieve their goals by any means and are not waiting for Misyār marriage, and then the measurement of Misyār marriage on the marriage of the analyst is incorrect, because the marriage of the analyst is never intended, because it is a bridge for others to express in order to analyse the woman formally for the first husband, Misyār marriage is a marriage intended for itself, with legitimate objectives of chastity, a child, and so on.⁴⁹

Branch

Some scholars have stopped judging this type of marriage, and among them is Sheikh Muhammad bin Šāleḥ Al-Uthaymīn, where he said when asked about the ruling on Misyār marriage: "We were in the first negligence in his matter, and we say hopefully there is nothing wrong with it, and then we clarified, so we refrained from issuing fatwas because we fear serious consequences in this marriage. So, we refrained from issuing a fatwa about it."⁵⁰

As well as Dr. Muhammad Faleḥ Muṭlaq, professor at Yarmouk University in the Kingdom of Jordan, said: I tend to stop on this issue, it is not considered adultery until we are certain of its sanctity, and we do not say that it is permissible because of the serious harms, and to ward off evil is ahead of bringing interests.⁵¹

Selected Opinion

After mentioning and discussing the statements and evidence, I tend to the view of the proponents of the second view, who say that Misyār marriage is permissible with hatred, as a mediation between those who expand in permissibility and those who are strict in sanctity, because the contract in Misyār marriage is valid in form, but it is defective, because it does not achieve all the legitimate purposes desired from marriage from the formation of a cohesive home based on affection, mercy, housing and raising children. Also, such a marriage is frequent in divorce, because whoever marries Sahel is divorced easily, and the woman eventually remains without a man, and takes the title of divorced instead of spinster, and the problem remains the same, even more severe.

Conditions

In this regard, the following conditions must be observed:

1. The elements of the marriage contract shall be fulfilled, especially the offer and

- acceptance of the husband and wife.
2. The motive for the marriage must be legitimate, i.e., the intention to marry must be permanent.
3. To fulfil the conditions where the information and advertising, so that it is distinguished from adultery, and take the *Akhdān* which is always in secret.
4. If a man pays a dowry, even a small dowry, to the wife, and if it is done without a dowry, she has a dowry of the same.
5. The contract should not stipulate that the woman waives the right to have sexual intercourse because it invalidates it.

Conclusion

The research article on Misyār marriage provides a comprehensive analysis of this controversial practice within Islamic jurisprudence. Misyār marriage is defined as a legal marriage in which the woman willingly waives some of her rights, such as alimony or the husband's obligation to stay overnight. It is primarily practiced in Gulf countries and has emerged as a solution to various societal challenges, including the needs of expatriates, widows, and divorced women. The practice is, however, the subject of significant debate among Islamic scholars. The article outlines differing perspectives from scholars, some of whom permit the marriage unconditionally, while others allow it with reservations, and a few declare it outright forbidden. Those who support it emphasize its compliance with Islamic principles of marriage in terms of witness testimony, consent, and the absence of any clear prohibitions. On the other hand, critics argue that Misyār marriage fails to fulfill the broader goals of marriage, such as emotional support, stability, and the proper upbringing of children, leading to social and personal harm in the long term. The article leans toward the view that Misyār marriage is permissible but discouraged. It fulfills the basic conditions of a marriage contract but is defective as it does not fully meet the intended purposes of marriage in Islam. The scholars highlight the negative consequences, including the likelihood of divorce and its failure to build a stable and nurturing family environment. In conclusion, while Misyār marriage may offer short-term solutions for certain individuals, its overall effectiveness in meeting the objectives of Islamic marriage remains questionable. The practice should be approached with caution, ensuring that all essential elements of marriage are respected and that the motivations for entering such unions are legitimate and long-term.

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- 24 Bilal Khalid, **Zawāj Al-Misyār**, (Riyadh: Majalla tul Mujtam‘i, No. 1266, 1997), P. 20.
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- 26 He said: I know that this name is a new improvised and is intended to marry a woman and leave her in her house, and he does not abide by her oath or overnight stay or residence, which is permissible if the wife agrees to do so. This is a written answer by which the Sheikh answered a question posed to him by the author of the book Misyār Marriage, Abd al-Malik al-Mutlaq. (See: Abd al Malik al Mutlaq, **Zawāj al Misyār**, P. 204.)
- 27 Al Nādī, **Al-Zawāj al Mustahdith**, P. 39.
- 28 Ibid.
- 29 Al Qarḍāwī, **Zawāj al Misyār**, P. 8.
- 30 He said: "This marriage is valid and undesirable in Sharia, because it lacks the fulfilment of the purposes of Islamic law in marriage with psychological housing, supervision of parents and children, fuller care of the family and wiser education." (See: Al Zuhayli, **‘Uqūd al-Zawāj al-Mustahditha**, P. 43.)
- 31 Where he said: This marriage with this perception does not appear to me to say that it is forbidden, although I hate it, and consider it insulting to women and their dignity, but the right is hers, and I have accepted that, and waived her right to it. (See: Sheikh ‘Abdullah Bin Mane‘, **Majmū‘ Fatāwā wa buḥūth**, (Riyadh: Dar Al-Asimah, 1418H), 4/262.)
- 32 He said: This marriage achieves immunity, but it does not achieve housing, and it is more likely that the woman is the suitor, and therefore she can judge the benefit she earns. (See: Abd al Malik al Mutlaq, **Zawāj al Misyār**, P. 118.
- 33 He: said that there are many harms in it, foremost of which is its negative impact on the upbringing and morals of children. (See: Abd al Malik al Mutlaq, **Zawāj al Misyār**, P. 120.)
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- 36 He was strongly carried on him as he said: Misyār marriage is a laugh and a game. Misyār marriage has no reality, and Misyār marriage is an insult to women and a play in them. (See: Abd al Malik al Mutlaq, **Zawāj al Misyār**, P. 120.)

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