

## Misyar Marriage: Its Legal Status and Oversight

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### ABSTRACT

**Objective:** The research aims to compile various scholarly opinions, outline the relevant Sharia evidence, and determine the ruling on this form of marriage. It also examines the origins of Misyar marriage, the specific rights a woman may waive, and the legal perspective regarding the practice. To define the concept of misyar marriage in linguistic and technical terms and to determine its legal nature. To clarify the reasons behind the spread of misyar marriage in contemporary societies. To outline the essential elements of misyar marriage and the conditions for its validity from both religious and legal perspectives. To analyse the legal status of misyar marriage and the extent to which it is recognised in personal status laws. To highlight the role of legal and judicial oversight in protecting the rights arising from misyar marriage. **Method:** Descriptive, analytical, and historical methodologies were employed, as they are best suited to the nature of the study. The historical approach was used to trace the origins of this issue and the reasons that led to its emergence in the lives and circumstances of Muslims. The inductive approach was employed to compile the relevant Islamic texts, opinions and fatwas concerning the issue. The analytical approach was applied to conduct an analytical study of these fatwas, texts and legal opinions with a view to arriving at a legal ruling, giving preference to one opinion over another, or formulating a new opinion on the matter. **Results:** It has been found that misyar marriage gives rise to jurisprudential and legal controversy due to the conflict between the validity of its Islamic legal elements and its contravention of certain objectives of marriage based on family stability. The research revealed a lack of clear legislative regulation of misyar marriage in many personal status laws, leading to differing legal positions regarding it. Weak oversight of misyar marriage makes it difficult to protect spousal rights, particularly with regard to maintenance, parentage and family safeguards. The study revealed that certain forms of misyar marriage are exploited to circumvent the legal and social obligations inherent in traditional marriage. The study demonstrated that the official registration of misyar marriages is an essential means of reducing disputes and safeguarding the legal rights of both parties and their children. **Novelty:** This study is part of a series of publications discussing Misyar marriage and its associated rulings, as well as the role of Islamic jurisprudence in addressing contemporary developments and emerging issues. The research combines Islamic jurisprudential opinions, Sharia evidence, and personal status law to examine the legal status of Misyar marriage together with the role of legal and judicial oversight in protecting the rights arising from it.

## INTRODUCTION

One of the fundamental aims of Islam is to build a sound society in which people live happily. It has addressed family matters and sought to achieve these aims by nurturing the Muslim individual and the virtuous citizen, and by establishing relationships founded on mutual support, compassion and affection. It has not left these relationships without guidelines and consequences; rather, it has imposed upon every member of the family – whether husband, wife or children – a set of rights and duties for the sake of everyone's happiness. It is therefore essential to examine any new

developments concerning personal status matters in order to protect honour and offspring and safeguard them from loss.

### **The significance of the research**

The significance of this research stems from the growing phenomenon of misyar marriage in Arab societies and the resulting jurisprudential, legal and social debate regarding its legitimacy and legal implications. The importance of this study is further highlighted by its aim to clarify the legal status of misyar marriage and the adequacy of the oversight imposed upon it to protect the rights of the parties to the marital relationship, particularly women and children, as well as the research's contribution to enriching legal studies on contemporary personal status issues.

### **Research objectives**

1. To define the concept of misyar marriage in linguistic and technical terms and to determine its legal nature.
2. To clarify the reasons behind the spread of misyar marriage in contemporary societies.
3. To outline the essential elements of misyar marriage and the conditions for its validity from both religious and legal perspectives.
4. To analyse the legal status of misyar marriage and the extent to which it is recognised in personal status laws.
5. To highlight the role of legal and judicial oversight in protecting the rights arising from misyar marriage.

### **Research Problem**

The research problem is encapsulated in the following main question:

To what extent does misyar marriage enjoy a clear legal status, and how effective are legal and judicial oversight in regulating it and protecting the rights arising from it?

A number of sub-questions stem from this problem, the most important of which are:

1. What is meant by misyar marriage?
2. What are the reasons for its prevalence?
3. What are its essential elements and conditions for validity?
4. To what extent are the legal regulations and oversight imposed on it adequate?

### **RESEARCH METHOD**

1. The historical approach, with the aim of tracing the origins of this issue and the reasons that led to its emergence in the lives and circumstances of Muslims.
2. The inductive approach, in an attempt to compile the relevant Islamic texts, opinions and fatwas concerning the issue.
3. The analytical approach, to conduct an analytical study of these fatwas, texts and legal opinions with a view to arriving at a legal ruling, giving preference to one opinion over another, or formulating a new opinion on the matter.

### **Structure of the Research**

The nature of the research necessitated its division into two sections, as follows:  
Section One: The Nature of Misyar Marriage and the Reasons for its Prevalence.

Subsection One: The Definition of Misyar Marriage in Linguistic and Technical Terms.

Subsection Two: The History of Misyar Marriage and the Reasons for its Prevalence.

Section Two: The Essential Elements and Conditions of Misyar Marriage.

Subsection One: The Essential Elements of Misyar Marriage.

Subsection Two: The Conditions of Misyar Marriage.

## RESULTS AND DISCUSSION

### A. An Introduction to the Concept of 'Masir', Its History and Origins

#### The Definition of 'Masir' in Linguistic and Technical Terms

'Sair' in the Arabic language: to travel across the land. The Arabs say: 'The man travelled' (sār), 'he is travelling' (sayār, misyār, tasyār, masīra, sirūra) when he sets off; and they say: 'The people travelled' (sār al-qawm, yusīrun, sayār, misyār) when their journey extends in the direction they are heading. 'Tasyār' is a verbal noun derived from 'sir', 'Masir' is a form of exaggeration used to describe a man who walks a great deal; it is a colloquial term commonly used in some Gulf states, denoting passing through without lingering. It is argued that 'Masir' marriage is alien to Islamic sensibilities, and 'masyar' marriage is a recent phenomenon; it will take some time for a definitive understanding of its meaning to be established. The difference of opinion amongst scholars regarding the term 'masyar' marriage stems from two factors. The first is that the term 'masyar' is new, and the person asking the mufti for a ruling interprets it in various ways, so the fatwa depends on the specific nature of the question[1]. The second reason is the scholars' disagreement regarding the impact of the circumstances surrounding the actions on the ruling pertaining to the case in question. Nevertheless, despite this disagreement, we shall attempt to ascertain the intended meaning of 'misyar marriage' based on the collective views of contemporary scholars. Ahmad al-Tamimi states in a study he conducted on this subject: 'Under this form of marriage, a man – enters into a marriage with a woman through a Shari'ah-compliant contract that fulfils all the essential elements, but the woman waives her right to accommodation and maintenance)). Sheikh Yusuf al-Qaradawi states: 'It is a practice known to people since ancient times, whereby the man goes to the woman's home and the woman does not move into the man's home; and in most cases, she is a second wife, whilst he has another wife who lives in his home and on whom he spends[2]. Sheikh 'Abdullah bin Mani', a member of the Council of Senior Scholars in the Kingdom of Saudi Arabia and a judge in Makkah al-Mukarramah, says: 'What I understand from misyar marriage – and my fatwa on the matter is based on this understanding – is that it is a marriage that fulfils all its essential elements and conditions. It is a marriage that takes place through an offer and acceptance, subject to the well-known conditions of the consent of both parties, guardianship, witnesses, and suitability, and includes the agreed dowry; it is only valid if all legal impediments are absent. Once it is finalised, both parties are entitled to all the rights arising from the marriage contract in terms of offspring, inheritance, the 'iddah, divorce, sexual relations, cohabitation, maintenance, and other such rights and obligations)) From these statements, we find that a 'misyar' marriage is based on

exempting the husband from the duty of cohabitation and maintenance, and on an arrangement regarding domestic arrangements between her and his other wife, by way of a concession on her part; for she desires a man who will exempt her, and protects her, even though she imposes no financial burden on him, given that she possesses her own wealth, accommodation and is entirely self-sufficient. This is because the couple have agreed that he shall not spend the night with her nor provide financial support; in other words, there is no cost to the husband, as the wife's objective is chastity and she already has sufficient wealth and accommodation to support herself. What is a 'misyar' marriage? It is a lawful marriage with a contract and a dowry, but the husband is exempt from two essential elements without which the relationship between a man and a woman cannot exist, namely[3]:

1. Exemption of the husband from the obligation to provide for his wife.
2. Exemption from the obligation to provide accommodation for his wife.

In other words, in this marriage, the wife voluntarily waives some of her legal rights in exchange for the resolution of her personal problem, It is worth noting that Article 37 of the Jordanian Personal Status Law permits both spouses to stipulate in the contract any beneficial condition that does not contravene the purposes of marriage and does not involve anything prohibited by Sharia law, provided it is recorded in the contract document; such a condition must be observed unless it is prohibited by Sharia law[4] . Furthermore, Article 21 of the Jordanian Personal Status Law stipulates that if the contract is validly concluded, the husband is obliged to pay the wife the dowry and maintenance, and the right of inheritance between them is established. However, in most cases of misyar marriage, there are specific reasons for entering into such a union; for example, the wife may be divorced and own a house, or be an heir or the owner of a property, yet still require a husband just like any other woman. She may choose a man who is already married, has a family and children, and is unable to publicly announce this marriage; consequently, it is agreed that the marriage contract be drawn up in accordance with the conditions of a misyar marriage, whereby the husband visits her during the day but does not spend the night with her, and the wife voluntarily waives this right on the understanding that this resolves her problem. Similarly, paragraph 14 of the Syrian Personal Status Law states ('If a marriage contract is subject to a condition that contravenes its legal framework or its objectives, and requires something that is prohibited by Sharia, the condition shall be void but the contract shall remain valid'), and similarly, Article 6, paragraph 3 of the Iraqi Law states that lawful conditions stipulated within a marriage contract are considered binding and must be fulfilled, A condition is lawful if it is required by the contract, confirms what is required by the contract, is permitted by Islamic law, or is in accordance with custom; however, it is not customary for a husband to leave his wife for a period, then return to stay for ten days before leaving again, as this is contrary to Islamic law and custom[5].

### **Its History and Reasons for its Spread**

Similar forms of marriage have existed for a long time; hence, we find that Ibn Qudamah discussed it in his book *\*Al-Mughni\**, referring to it as the 'marriage of night

and day', Imam Ahmad ibn Hanbal, may Allah have mercy on him, had previously addressed this. Ahmad al-Tamimi has explained that this form of marriage first emerged in the Al-Qassim region of Saudi Arabia, before spreading to the Central Region. It appears that the person who pioneered the idea was a marriage broker named Fahd Ghoneim, People turned to him to arrange marriages for women who had missed the opportunity for a conventional marriage, or for divorcees whose previous marriages had failed. Similarly, Professor 'Abd al-Halim Abu Shaka, author of the book \*The Emancipation of Women in the Era of Prophethood\*, called for young men and women to be married whilst each remained in their own family home, meeting weekly at the home of one of their families or in a hotel, whilst postponing having children, due to the problem of spinsterhood. However, his idea never came to fruition, and this form of marriage is now spreading in (Egypt, Sudan, Lebanon, Afghanistan and elsewhere). In the past, misyar marriages were rare, because marriage was easy and straightforward, and there were no financial or social obstacles such as those we see today. Furthermore, women had no personal wealth other than what they inherited, in most cases, and so misyar did not become widespread, as they had no money with which to compromise on some of their rights. Nowadays, however, the obstacles to marriage have multiplied, and the number of divorced and widowed women has increased; furthermore, as women now work, they have their own source of income. Among the most important reasons for its success are: the rise in the rate of spinsterhood, rising divorce rates, women entering the workforce, the increasing age of young women who insist on completing their university studies before marriage, the rise in dowries, the increasing costs of marriage, and the tendency to show off through lavish celebrations, furniture, gifts and so on[6].

Some men feel the need to take multiple wives, either because they have a strong desire for sexual relations, and one wife is not enough for him, or because his wife is ill or has problems, and he lacks the financial means to marry another wife, given the dowry, maintenance and accommodation that such a marriage entails. His problem may also be that his wife refuses to allow him to marry another woman, or he may have children and relatives who reproach and rebuke him for marrying another woman, so he sees the solution in a misyar marriage. Al-Asra magazine conducted a survey in which 363 young women took part, concerning misyar marriage, and one of the survey's objectives was to identify the motives behind this type of marriage. The results of this randomised survey showed that 52.9 per cent of those who took part believed that the reason for misyar marriage was men's desire for pleasure. The author of the investigation interviewed 500 women over the course of a year, Most cases involved couples of Arab nationalities, in a society that does not recognise such marriages, nor are they legalised by laws and regulations. This exposes women to psychological and physical consequences and deprives them of their marital rights, particularly regarding childbearing and family formation. The author conducted field interviews with women, This investigation also documents cases where wives' rights have been violated through the exploitation of their lack of legal and religious knowledge, in the absence of a clear definition of such marriages or a fatwa prohibiting them from the General Fatwa Council. The investigation

found that two out of every three women – who were interviewed – entered into this arrangement with the consent or encouragement of their families, either in search of money or protection, or as a means of escape, with the number of unmarried women over the age of thirty now exceeding 100,000, compared to 3,000 twenty years ago. The author then continues in her article ‘The Chaos of Fatwas’: There are jurists who have declared it unlawful due to the ‘flagrant’ violation of women’s rights it entails, whilst the Fatwa Council merely prohibits its conditions and deems them null and void; however, it does not declare the contract itself – which involves a ‘hidden clause’ – to be unlawful, considering it a Sharia-compliant contract that ‘fulfils all conditions’ Such a marriage (where a man does not wish to abide by the provisions of Sharia, yet at the same time wishes to practise polygamy without it affecting his other family) is entered into because the social environment does not accept polygamy; the man resorts to it to satisfy psychological and biological needs, and this marriage is often contracted with a woman of a different nationality to the husband’s, he adds, characterising the arrangement as a lawful contract in which the conditions of marriage – namely a guardian, two witnesses and a contract – are fulfilled, but the only difference that gives rise to jurisprudential controversy over whether it is prohibited or permissible is the verbal conditions agreed upon by the parties, which are usually unfair to the woman[7].

## **B. The Essential Elements and Conditions of Misyar Marriage**

### **The Essential Elements of Misyar Marriage**

The Essential Elements of the Marriage Contract: Are the Sharia-prescribed elements present in a Misyar marriage? I shall now review these elements:

The First Essential Element / Offer and Acceptance: All jurists agree that the offer and acceptance are essential elements of the marriage contract; the contract is not valid without them.

Second Element / The Guardian: Jurists have differed regarding the guardian; some scholars consider it an essential element of the marriage contract, without which it is not valid, whilst others do not. As follows, the Hanafi school holds that the guardian is not considered an essential element of the marriage contract, meaning that a marriage is valid even without the guardian’s consent, and it is valid for a woman to enter into the contract of her own free will. The Maliki, Shafi’i and Hanbali schools, as well as Ibn Hazm and Muhammad ibn al-Hasan, hold that the guardian is an essential element of the marriage contract, and that the contract is not valid without a guardian. We may therefore observe that, according to the Hanafi school – contrary to the view of Muhammad – and according to one opinion within the Maliki school (contrary to the majority of scholars), a marriage is valid for a woman of sound mind who has reached the age of majority, as stipulated in Article 13 of the Iraqi Personal Status Law, which states: ‘The consent of the guardian is not required for the marriage of a sane girl over the age of eighteen,’ although it should be noted that this is now set out in Article 19 of the new law[8].

The third essential element: According to the majority of scholars, one of the essential elements of the marriage contract is that the spouses be free from any legal impediments, as it is inconceivable for a marriage to exist without a man and a woman.

The fourth essential element: Ibn Jazi of the Maliki school holds that the dowry (mahr) is an essential element of the marriage contract, whilst the rest of the scholars do not consider it to be one of the essential elements of the marriage contract.

The fifth essential element: Some Shafi'i scholars consider witnesses to be an essential element of the marriage contract. Al-Sharbini states that there are five essential elements: the formula, the bride, two witnesses, the guardian, and the groom. The rest of the scholars, however, regard witnesses as a condition of the marriage contract rather than an essential element. The difference between an essential element and a condition is that a pillar is that which is intrinsic to the very essence of a thing and constitutes its essence. It has also been said that it is that by which a thing is completed, and which is inherent within it. The 'essence' refers to the universal, intelligible reality. When they say that a pillar is intrinsic to the essence, it means that it is part of its concept, and its existence depends on that of the essence; Thus, the difference between an essential element and a condition is that a condition is that upon which a thing depends and by which it is completed, yet it is external to it. For example, bowing is an essential element of prayer, because prayer depends upon it even though it is an integral part of it, whereas ablution is a condition for prayer, because prayer also depends upon it, yet it is external to it[9].

### **Conditions of a Misyar Marriage**

A condition is that which, if absent, would render the contract invalid, or that without which the contract cannot exist, though its presence is not strictly required. There are various types of conditions in the contract: conditions that are in accordance with the purpose of the marriage contract and the intention of the Lawgiver. Scholars are unanimous on the validity of this type of condition, such as the wife's right to be treated with kindness, to be provided for, clothing, accommodation, and that he treat her and her co-wives equally; or conditions imposed on her, such as that she may not go out except with his permission, that she must not refuse him, and that she may not dispose of his property except with his consent, and the like. The Hanbalis hold that fulfilment of these conditions is obligatory; if he fails to do so, she has the right to annul the marriage. This is narrated from 'Umar ibn al-Khattab, Sa'd ibn Abi Waqqas, Mu'awiya and 'Amr ibn al-'As, may Allah be pleased with them. This view was also held by Shurayh, 'Umar ibn 'Abd al-'Aziz, Jabir ibn Zayd, Ta'us, al-Awza'i and Ishaq. As for conditions that run counter to the purpose of the marriage contract – that is, those that contravene what Allah has prescribed: Scholars are unanimous that conditions which contradict what Allah has commanded or forbidden, or which undermine the original purpose of marriage, are invalid. Among such conditions is a woman stipulating that her husband must not obey her, or that she may go out without his permission, or that he must not divide his time between her and his co-wives, or that he should not spend on them; or for her to stipulate that she is not to receive a dowry, that he should not make a vow concerning her, or that he should not spend on her[10]. Such conditions are not permissible under any circumstances, in accordance with the legal principle: 'What is established by Islamic law takes precedence over what is established by a condition.' Permissible conditions, on the

other hand, are those that do not contradict the purpose of marriage nor contravene what is prescribed by Islamic law [11-14]. Examples include stipulating that her husband must not remove her from her home or her country, must not travel with her, or must not take another wife whilst married to her; or that she may continue in work permitted by Islamic law, and so on. This pertains to the ruling on conditions[10], [15].

Hence, the conditions for a misyar marriage are as follows:

1. The presence of the wife's guardian is essential.
2. Two valid witnesses must be present.
3. Both spouses must consent to the marriage.
4. Furthermore, neither party may waive any of their contractual rights.
5. It must be ensured that there are no grounds preventing the marriage contract from being concluded.

The names of both the wife and the husband must be explicitly stated in writing to ensure the validity of the marriage contract.

## CONCLUSION

**Fundamental Finding :** This study found that misyar marriage remains a subject of significant jurisprudential and legal controversy because, while it generally fulfills the essential pillars and conditions of a valid Islamic marriage, it departs from key objectives of marriage related to family stability, shared responsibility, and long-term marital companionship. The absence of clear legislative regulation and weak legal oversight further complicates the protection of spouses' and children's rights, particularly regarding maintenance, parentage, and family welfare. **Implication :** The findings suggest that strengthening the legal regulation and official registration of misyar marriage can enhance legal certainty, reduce disputes, and better safeguard the rights of both spouses and their children. Effective oversight would also help prevent the misuse of misyar marriage as a means of evading the legal and social responsibilities associated with conventional marriage while preserving its potential social benefits, such as providing lawful marital opportunities for unmarried women, divorcees, and widows. **Limitation :** This study primarily examines misyar marriage from jurisprudential and legal perspectives, focusing on Islamic legal opinions and legislative frameworks. It does not provide empirical evidence regarding the lived experiences of spouses, the long-term social consequences of misyar marriage, or comparative analyses across different legal jurisdictions. **Future Research :** Future studies should investigate the practical implementation of misyar marriage in various countries, evaluate the effectiveness of different legal regulatory models, and examine the social, psychological, and economic impacts of misyar marriage on spouses, children, and family stability through empirical and comparative research.

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