

THE RELEVANCE OF *MISYĀR* MARRIAGE TO NIGERIAN MUSLIMS

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Abstract

Misyār (marriage of convenience) fulfils all the conditions of marriage contract in Islam except that certain conjugal rights are willingly obliterated by the couples. Though, the evolution of *misyār* in certain civilizations has inextricably invited contentions among Muslim scholars, the relevance of the practice in Nigeria is a thing of concern considering the level of poverty in the country and the fear of its being abused. The study explores scholastic opinions on the lawfulness and benefits of the marriage with a view to assessing its feasibility and relevance within the Nigerian environment using a combination of historical and descriptive research methods. Findings revealed that *misyār*, though with its advantages, is delicate to practice in Nigeria because it is vulnerably opened to abuse, and it therefore becomes the responsibility of Muslim scholars in the country to rather mature their thoughts and educate the *ummah* on

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the circumstances that could necessitate the practice and the limitations to its practicability.

Keywords: *Misyār*, Nikāḥ, Nigerian Muslims

Introduction

Marriage is a basic social unit of any society. Marriage is enjoined by Allāh *Subḥānahu WaTa'ālā* on all matured men and women who are fit for it (Qur'ān, 4:3). In reality, not every Muslim who goes into marriage is able to fulfil its obligations. However, some shy away from it for the fear of not being able to meet up with its requirements. Circumstances necessitate the legislation of *misyār* marriage (marriage without strings) in the Kingdom of Saudi Arabia by the then Grand Mufti of the Kingdom, Shaikh Abdul-Azeez bin Abdullah bin Bāz in 1996 and in April 10, 2006, a fatwa was issued by the Islamic Jurisprudence assembly in Makkah legitimizing *Misyār* Marriage. The 1996 development influenced the Mufti of Egypt, Shaikh Muhammad Sayyid Ṭanṭāwi in 1999 to pass a similar fatwa legalizing the practice (Badran & Turnbull, 2019). Just like the conventional marriage in Islam, *misyār* marriage fulfils conditions and policies of a valid Islamic marriage contract but only differs in the aspect of mutually removing certain marital rights by the couples.

Though the idea is heresy to some Muslims (Al-Nasr, 2011), some Islamic scholars consider it as a valid solution to societal problems (Al-Qaradawi, 2006). *Misyār* marriage and Nigeria peculiarities is thus the pivot upon which the central theme of this study revolves. The practice of marrying a woman with the woman fending for herself and sometime, providing herself with shelter is not strange in Nigeria. The practice is prominent with commercial drivers and some businessmen who stay away from their homes for

commercial expeditions and desire legitimate conjugal relationship within the period he is away from his wife.

Widows and divorcees are mostly vulnerable to this arrangement especially with the rise in the number of women in the society and the possibility of a widow having a number of children for her former husband without getting a man who is ready to accommodate her with her children while she is comfortable to provide herself and her children with accommodation. Even though, many Muslims practice this type of marriage with strict observance of the essentials of marriage in Islam, some men abuse it by taking it to be a means to satisfy their sexual desire and they run away from marital responsibilities in totality.

Inadequacy in the ratio of men to women in Nigeria is obvious but then, should the practice be promoted by Muslim scholars despite the fear for its abuse? If yes, will some men not choose to be negligent of their responsibilities even when they have the means? Will some Muslims not misinterpret the concept to be secret marriage? If mistaken for secret marriage, what becomes the fate of children born out of such relationship? If not misinterpreted, will the husband who could not take care of the wife be ready to take care of the children? On the other hand, if not promoted and people are left to the practice in ignorance, will obscenity not be the order of the day in the society? Will widows and divorcees who are capable of providing for their needs but need a man for sexual gratification, not be short-changed? These and many other questions are considered in this paper with a view to establishing the viability or otherwise of the novel marriage contact within the Nigerian environment.

Conceptual Clarification

Concepts that need to be clarified in this study are three; *Nikāḥul-Misyār*, *Nikāḥul-Muṭ'ah* and *Nikāḥus-Sirri*. *Nikāḥul-Misyār* is a mutual alliance whereby the wife waives some conventional marriage rights such as cohabitation and financial support while all the essentials of marriage are observed when entering into the contract. This marriage was not known to the Prophet *Ṣallallāhu 'Alayhi Wa Sallam* and his companions as an institution but a similar practice could be traced to the waiver of conjugal rights by the wives of the Prophet *Ṣallallāhu 'Alayhi Wa Sallam*. The importation of *Misyār* marriage into Islam as an institution was a product of *Ijtihad* (personal effort) of scholars in consideration of necessities at the time.

A marriage in which the woman or her *waliy* concedes that it will last for a specified period even when the essentials of marriage are met is called a *muṭ'ah* marriage (temporary marriage) (Ambali 2003).¹ Initially, the Messenger of Allāh *Ṣallallāhu 'Alayhi Wa Sallam*, at the battle of *Awtas*, allowed *mut'ah* for three days, and then forbade it thereafter. Reports show that the practice was discontinued and within the scheme of Islamic point of view, *Muṭ'ah*, without considering the position of those who support it, should be dissolved whether having been consummated or otherwise. This is because it is a way to boycott all the essential principles of *Nikāḥ* essentially laid down by Islamic law, such as, terms of dissolution of marriage, inheritance, modes and process of terminating marriage and building solace in the mind of the woman. Such practice is considered obsolete and a defeat of the purpose of religious prohibition of promiscuity (Adebayo 2014).

Nikāḥus-Sirri (Secret marriage) is a situation whereby the husband conducts the marriage without any witness or

instructs the witnesses to keep knowledge of their marital union to themselves, conceal it from certain class of people or from one of his wives. While some scholars see nothing bad in concealing marriage, many others condemn the action on the basis that Imam Malik's opinion was sought about a man who duly married but ordered those who were present to conceal it from certain people, but he responded that it was not proper, and the marriage is invalid (Al-Kastinawiy, n. d). The Prophet *Ṣallallāhu 'Alayhi Wa Sallam* was reported to have instructed that marriage should be publicized (Sunan *at-Tirmidhi*: Hadith Number 1089). Despite the similarities in the three types of marriage, only *Misyār* passed the test of time under Islamic law because the only difference between *misyār* marriage and the conventional Islamic marriage is the waiver of rights by the wife on the mutual agreement of the couples.

The Nigerian Muslim Homes and Matrimonial Responsibilities

Marriage in Islam is an age-long socio-religious legal practice which is as old as human race. It blends its philology for several reasons among which are procreation of humanity, quenching of human sexual urge, securing dignity of woman and instilling in a woman, and the sense of responsibility (Adebayo 2014). As-Ṣābūniy (1995/1415H) observed that marriage is a service to Allāh *Subḥānahu WaTa'ālā* and anybody who practices it will be rewarded even when he derives pleasure from it. The sources of the Islamic law are replete of authorities on the legality and philosophy of marriage institution. Allāh *Subḥānahu WaTa'ālā* says: "And is He Who has created man from water and established for him bonds of lineage and marriage. All-Powerful is your Lord." (Qur'ān, 25:54). Marriage is no doubt, a design by Allāh *Subḥānahu WaTa'ālā* to keep the world in existence. He *Subḥānahu WaTa'ālā* said:

And among His signs is that He creates for you spouses out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you. In this there are clear signs indeed for people who think. (Qur'ān, 30:21)

Discussing the philosophy of marriage in line with the verse above, Sayyid Quṭb (1412 A. H) posited that human emotion and feelings towards other sex is insatiable, hence its legalization would serve as a relief, mental stability, and comfort to a large extent for both sexes.

The stand of Islam on the necessity of marriage consummation is beyond social benefit as depicted by some people but that it conglomerates preventing all sort of criminality and social vile; suicide, homicide, lesbianism, sodomy, xenophobia, chauvinism, stigmatization, promiscuity, etc (Doi 2008/1429H). However, marriage remains invalid until certain criteria are met by the prospective couples. These criteria include maturity, sanity, capability for orgasm, and opposite sex. These criteria go with some essentials which are: Offer and acceptance between the couple, approval of the bride's guardian, payment of the bridal price and presence of at least two witnesses. It is only when these four essentials are met that marriage is considered valid in Islam. This is without prejudice to the fact that terms and conditions are attached to the fulfilment of the identified essentials.

The Islamic policy on the institution of marriage is elucidatory that its practice is well regulated. In other words, setting and running of Muslim family is promulgated within the premise of realising a well balance members of the society that is worth of emulation. To this effect, °Ali (2012)

maintained that husband is saddled with financing, while the wife is assigned the responsibility of managing the household, the property and the children. In essence, the husband is to be the principal overseer and breadwinner of the family by the characteristics of his being a man with financial capacity and being able to handle the affairs of the house diligently (Qur'ān, 4:34). Az-Zuhayli (1418H) asserted that the man is the head of the family as a result of his natural physis and body chemistry, wisdom, and being strong in determinacy. He argued that a woman who shares any of these qualities with a man only does so at her own will. A woman is created with a weak body to be served by a man who has a strong body.

The financial responsibility of a man as the head of the family connotes providing for his family members what is worthily standard according to their society and his means without any hindrance. Doi (1404H.) argued that the care for parents is not a genuine reason for a man to be found wanting in his responsibilities towards his wife and child(ren). This is the more reason why Aṭ-Ṭanṭāwī (1997) views that the obligation of a man in providing for his wife is on condition that the wife is good (*salīha*). He based his argument on his understanding of the verse of the Qur'an.

Men shall take full care of women with the bounties with which Allāh has favoured them more abundantly than others, and with what they may spend of their own wealth. The righteous women are devout, guarding the intimacy which God has ordained to be guarded. As for those women from whom you have reason to fear rebellion, admonish them, then leave them alone in bed, then beat them. Then, if they pay you heed, do not seek

any pretext to harm them. God is indeed Most High, Great. (Qur'ān, 4:34)

Ibn Kathir (1999) shares the opinion of majority of scholar when he emphasises that maintenance of the family is solely levied on the man by providing clothes, food, shelter, and medical care and concludes that she, however, enjoys such services when she is responsible to the husband, and she forfeits it when she is irresponsible. The status of the financial responsibility of the man is determined by his economic capacity which by implication is designed by economic upward or downward of their community. Ambali argues that residential location of the couple is one of the principal determinants of quantity and quality of amenities that husband could provide for the family. He nevertheless maintains that the standard of maintenance which a man would render to the family must be in accordance with his financial status. (Ambali 2003)

Man's responsibility in the view of Muhammad (2008) extends to provision for her needs during the *'Iddah* (waiting) period of his divorced wife, in spite of being in a probable situation. The period refers to the number of months and days in which a divorced or widowed wife has to wait in the husband's house before she finally vacates the house for another.² Similarly, a woman who observes *'Iddah* has right to maintenance by the husband except conjugal relationship.

The application of Islamic policy on the family setting as observed may be hindered by some factors in Nigeria. These factors include cultural tendency of the society and the financial strength of the husband. Every family tends to have a structure, style, shape, and practice consider as norm without having consideration for their palatability with the Islamic injunction or otherwise. (Muhammad Busayri 2011).

While some people are deliberately negligent of their responsibility as a husband in the Nigerian set-up, others are constrained by financial incapacitation. The constraints determine the option of many Nigerians for non-marriage or monogamy even when widows and divorcees clamour for partners. Then, who to blame since financial affordability is one of the prerequisites for the Islamic marriage consummation (*Al-Bā'ah*) (Al-Bukhari, *Sahih Al Bukhari*: Hadith No. 5065).

Views of Scholars on *Misyār* Marriage

The emergence and the rising popularity of *misyār* marriage are best understood within the practical framework of social construction. It is obvious that *Misyār* Marriage sprang up into existence in some environments, particularly Saudi Arabia, when the Kingdom's highest authority legitimised it with an Islamic edict. With this framework in place, this marriage contract has been legally permitted in the conservative Muslim kingdom for decades. The proliferation of spinsterhood, incapacitation of husbands to rise up to the financial responsibilities and desire to conceal second wife are all the circumstances that gave birth to such marriage contract Islam, according to the prevailing opinions of scholars, allows youngsters whose resources are too limited, widows who have their own residence and financial resources but have no apparent hope of getting married again, or those who are divorced to have *Misyār* marriage contract so that they could protect their chastity and enjoy the blessings of marriage. The legality of *misyār* marriage or otherwise has engendered heated arguments among Islamic scholars. Some scholars reliably support it on the bases that it is deeply rooted in Islam provided that the following conditions for the validity of Islamic marriage contract are fulfilled:

1. The formal statements of offer (*'Ijāb*) and acceptance (*qabūl*). It is not expected to give indication of offer and acceptance of marriage in Islam through any other means but verbal (Ibn Kathir 1999), if the person initiating the expression is capable of doing so. It must be unambiguously stated by the first party and clearly understood by the second.
2. *Waliy* (Marriage guardianship). The conjugation must be approved by the parent or guardian of the bride. A marriage guardian for a Muslim woman should be a free Muslim male who is Islamically fit to run his affairs independently (Ali 2012). Qur'ān, 4:25 states: "Marry them with permission of their people." The two sources of marriage guardianship are blood association or authority. Scholars are divided over the condition of a guardian. Abu Hanifah and Abu Yusuf are of the opinion that a mature woman can give herself out for marriage without a *waliy* while majority of scholars positioned that *waliy* is a necessity (Az-Zuḥayli, 1418 A. H). However, Abdullah (1404) maintained that Maliki is of the opinion that the necessity is only when the woman is young. But for a widow or a divorcee, she can marry herself out or be married out by the *waliy* with her consent.
3. *Mahr* (Mandatory gift) which the groom gives the bride. It is any valuable article that is lawful for a Muslim to own. There is no limitation to an item of *mahr* in as much as it is mutually agreed upon by the couple (Sabiq1983). Other words for *mahr* in clued *niḥlah* (token), *ṣadaqah* (dower) or *ajr* (entitlement). Qur'ān, 33:50 reads: "O prophet we have made lawful to thee thy wives when thou have paid their dowries (*ujur*)".

4. Witness/Publicity (*Ishhād*): marriage is not expected to be done in secret. The solemnization of marriage should be witnessed by at least two honest and pious men in order to avoid secret of purpose.
5. Absence of a fixed period of time. One of the basic requirements of a valid marriage contract is that it does not entail agreement of lapses at a particular period of time.

Osmani (2011) observed that scholars who argued for *misyār* marriage include Ibn Baz, Sheikh Yusuf Al-Qardāwi, Wahbah Az-Zuḥayli, Sayyid Ṭanṭāwi, Sayyid Su'ud As-Shuraym (Imam of Masjid al Haram), Yusuf al Badri (an Egyptian and a member of the supreme council for Islamic affairs), Professor Arif Ali Arif (a professor of *fiqh* and *Uṣūl*, International Islamic University, Malaysia) and a host of others. The argument of proponents of the marriage are that:

1. Fulfilment of the above basic requirements of Islamic marriage contract validates *misyār* marriage.
2. There is no legal basis for condemnation of the practice.

Sheikh Yusuf Al-Qaradawi posited that *misyār* marriage is religiously legitimate even if it is considered morally wrong. He submitted that “there is no doubt that such marriage may be somehow socially unacceptable, but there is a big difference between what is Islamically valid and what is socially acceptable,” indicating that as long as both parties accept the terms of the marriage contract then they are legally married in the eyes of Allāh (Al-Qaradawi 2006).

3. The basic feature that distinguishes *misyār* marriage from the conventional standard one, just as it was

previously mentioned, is that the spouses, and more specifically the wife, gives up certain rights by free will. However, Islamic historical fact has it that the wife is at liberty to forgo her right to housing, free access to the husband and financial supports. The husband may also give up the right of his wife living with him at his residence. The following incidents lend credence to the permissibility of renouncing certain marital rights:

Sayyida A'isha (may Allāh be pleased with her) relates that Sawda bnt Ama'a (may Allāh be pleased with her) gave up her (right of spending the) day (with the Messenger of Allāh) to A'isha, and so the Messenger of Allāh (*Ṣallallāhu 'Alayhi Wa Sallam*) used to give A'isha both her day and the day of Sawda (may Allāh be pleased with both).
(At-Tirmidhi: Vol. V, Hadith No. 3040)

In another authentic tradition:

Sayyida A'isha (may Allāh be pleased with her) relates that in his fatal illness, the messenger of Allāh (*Ṣallallāhu 'Alayhi Wa Sallam*) used to ask, "Where will I be tomorrow?" wanting the day of A'isha, his wives gave him permission to be wherever he wished, so he was in the room of A'isha until he passed away by her...
(Al-Bukhari. *Sahih Al-Bukhari*. Hadith No 4185)

It is stated in *Al-Fatāwā Al-Hindiyyah* that it is not wrong to marry a woman on a day-time basis (*nahariyyah*). This means that the man marries her on the condition that he

will spend the day with her but not the night. (Committee of Scholars 1310H). It is, however, important to note the submission of Imam Al-Haskafi who posited that it is valid for a wife to grant her right of spending time with the husband to her co-wife. (Umar, 1992).

In his submission, Qurṭubi emphasized that the verse of the Qur’ān which reads “... but if they, of their own pleasure, remit any part of it to you, take it and enjoy it with right good cheer”, relatively relates to conjugal matters. And that in general sense of usage, it states the permissibility of making an item of dowry a present to the husband. On the whole, it is required that the solemnization takes place officially in order that the wife’s reputation is dully preserved; and enables the husband to have free access to her without fear of malicious reactions from the populace.

1. The urge for motherhood is considered a reason for acceptability of *misyār* marriage. Proponents of the practice argued that some women are in dire need of a baby and when they could not get a husband, they retire to artificial impregnation which is not allowed in Islam and instead of resorting to such impregnation, to have a *misyār* husband would be better off.
2. *Misyār* marriage is clamoured for because it is considered a lesser evil. Instead of a woman to remain forever unmarried, she may preferably be under a husband, even if the husband is not responsible for her home keeping. Proponents further argued that if a woman who is not of age should remain alone, she may be easily tempted or tempt men around her.
3. *Misyār* marriage will reduce the number of the unmarried women in the society.

4. Some women choose to remain in their houses probably because they have a number of children from their first husband that cannot be favourably accommodated by the new husband or because they are the bread winner of their family and don't want to be at distant from the family.
5. Some men want to hide a second wife from the first wife so that they do not hurt the feelings of the first wife.
6. Some men who travel out of the reach of their wives for a long period and fear committing *zina* may take to the *Misyār* marriage as a means of solace but must not conceal the new relationship for fear of future crisis because *Misyār* marriage is not secret marriage. Qur'ān, 5:5 condemns secret marriage and scholars such as Ibn Quddamah reported that any marriage secretly conducted is invalid (Ibn Quddamah, 1968).

Notwithstanding the brilliant arguments advanced by protagonist of the practice of *misyār* marriage, Osmani (2011) observed that some scholars reject the practice. Among these scholars are; Muhammad Nāṣiruddīn Al-bāniy, Muhammad Salih bin al-'Uthaymīn and members of the Fatwa committee of Al-Azhar. The practice is vehemently condemned by some Nigerian scholars such as Quodri (2021) who argued that the practice is based on deceit and betrayal of trust because the man will eventually betray the trust the woman reposed in him and for so doing, he shall end up in the hell fire. He reiterated that the practice was neither known to the Prophet *Ṣallallāhu 'Alayhi Wa Sallam* nor his companions. It is but a way of destroying the enviable purpose of the institution of marriage. Reasons advanced for the prohibition of this practice by the antagonists as earlier discussed include:

1. *Misyār* marriage is open to abuse. The antagonists argued that even if all the requirements for the validity of the Islamic marriage contract take place, it is invalid because men who are not ready to shoulder responsibilities or spring up to bridal stewardship will take it as an avenue for sexual gratification only.
2. Ibn Uthaymīn and Al-bāni condemn the practice because (1) the relationship lacks the prime objectives of marriage contained in Q, 30:21. (2) Children that are products of this relationship may suffer fatherly care and maintenance (Osmani, 2011).
3. Quadri (2021) considers women and children of the relationship to be at the receiving end. He observed that with the relationship, the wife loses the pleasure of being in the company of her beloved one and when there is a break in the relationship, she is left alone to cater for the children that are products of the relationship.

A study of the polemics against the practice of *misyār* shows that the practice is condemned because it is considered a cheat on the wife and her children. The woman who agrees to *misyār* form of marriage is considered to have opted for it because that remained her last option for her need for sexual gratification and not her choice. The condemnation for the practice by the antagonists which is primarily based on its social acceptability is because the practice is being abused and woman are at the receiving end. Both the protagonists and the antagonists agree that *misyār* marriage:

- 1- Is a baby of necessity. It was introduced because of necessity.
- 2- Is a product of *ijtihad* and so, it could be tied to time and place.
- 3- Is a *Nikāḥ* that has all essentials of marriage well observed.
- 4- Is a contract of agreement and the woman involved should be ready to forfeit those rights she agreed to waive.
- 5- Is a means for spinsters to satisfy their sexual need legally and bear legitimate children.
- 6- Is different from *Nikāḥul-Muṭ'ah* because it has no time lapse.
- 7- Is a hybrid between marriage and singlehood. It benefits polygamists by attenuating the strain of their stress in maintaining second wife.
- 8- Is a fleeting escape from spinsterhood; or a chance to a fresh beginning for divorcees and widows who struggle to remarry in most cases.

Considering the reasons for the acceptability or otherwise of the practice, a study of the peculiarity of Nigeria will reveal the relevance or otherwise of the practice to the Nigerian society.

Data Analysis and Discussion

Nigeria has six geo-political zones; North-Central, North-East, North-West, South-South, South-East and South-West.

Interview and observation were used for data collection in major cities of selected states in four of the six geo-political zones. The other two zones; South-South and South-East were not studied because of a very low representation of Muslims in the zones. One hundred women were sampled in each of the geo-political zones to cover spinsters that are above thirty years of age, widows and divorcee that are willing to have a husband. In the north-central zone, Agbabiaka and Alagbado areas of the city of Ilorin in Kwara State were sampled for study. In Northeast, Mafoni and Hausari areas of the city of Maiduguri in Borno State were sampled for study. In Northwest, Kawo and Rigasa areas in the city of Kaduna in Kaduna State were sampled and in South-West, Oke-Ado and Oja-Igbo areas of Ogbomoso in the city of Ogbomoso in Oyo State were sampled. The research equipment was administered with the assistance of reliable research assistants in some of the zones that are far from the reach of the researchers. Below is the result of the interviews carried out:

	Widows		Divorcees		Spinsters	
	Number in Percentage	Working Class	Number in Percentage	Working Class	Number in Percentage	Working Class
North-Central (Ilorin, Kwara State)	45%	35%	25%	20%	30%	12%
North-East (Maiduguri, Borno State)	50%	30%	28%	20%	22%	10%
North-West (Kaduna, Kaduna State)	48%	30%	30%	22%	22%	10%
South-West (Ogbomoso, Oyo State)	48%	37%	22%	18%	30%	12%

Table 1 Status of widows, divorcees and spinsters in the four geo-political zones of Nigeria

From the table above, in the city of Ilorin, out of one hundred unmarried women studied in a given environment, 45% are widows and 35% from the 45% can sustain themselves with the mini business they engage in. 20% from the 25% divorcees can live on their own and just 12% from the 30% grown up spinsters who are probably products of universities and who are gainfully employed and can support themselves financially. By implication, 33% of unmarried women in the north central need a husband for provision of sustenance and other life essentials as shown below:

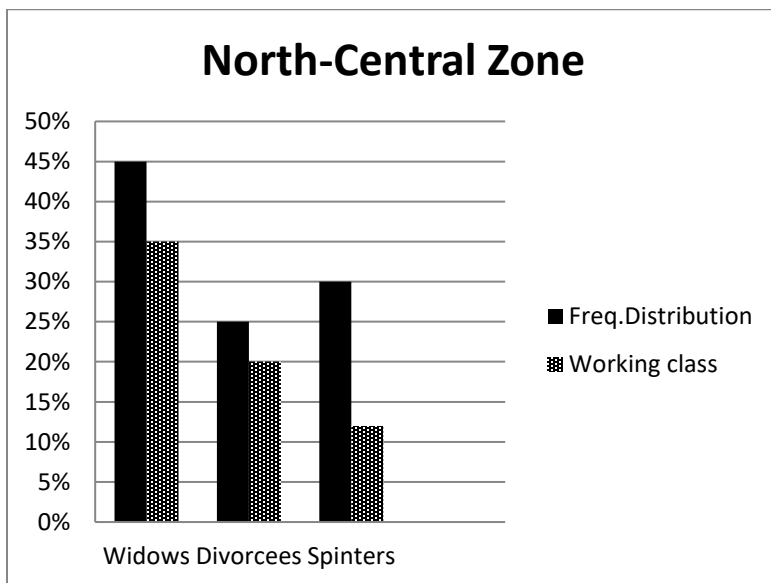


Chart 1: A flow-chart on North-Central Nigeria.

In the North-East, 50% of the unmarried women are widows and only 30% of them can cater for themselves with respect to basic essentials of life. 28% of the unmarried women are divorcees and 20% of the 28% can adequately cater for themselves. 22% of women in the region are spinsters who are grown up and are ready for marriage and only 10% of them can survive comfortably without a

husband. By implication, 40% of the women who are ready for marriage but are not married in the North-East need the support of a husband for a comfortable living.

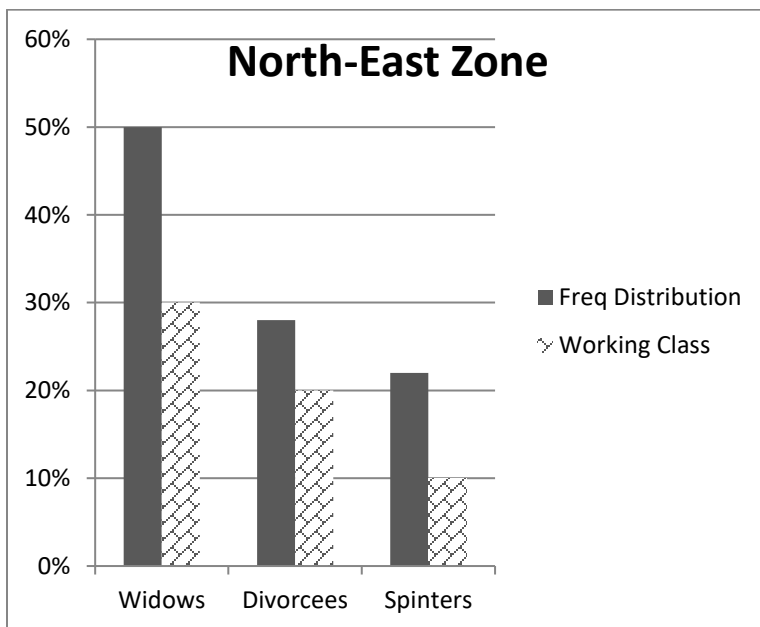


Chart 2: A flow-chart of percentage of widows, divorcees and spinsters North-East capturing.

In the North-West, 48% of the unmarried women are widows and 30% of these widows are working for survival. 30% of them are divorcees and 22% out of this 30% are struggling for survival. 22% of the unmarried women are grown up girls who are ready for marriage and out of this 22% have means for their survival. By implication, 38% of unmarried women in the North-West of Nigeria need the support of a husband for their feeding, clothing and shelter.

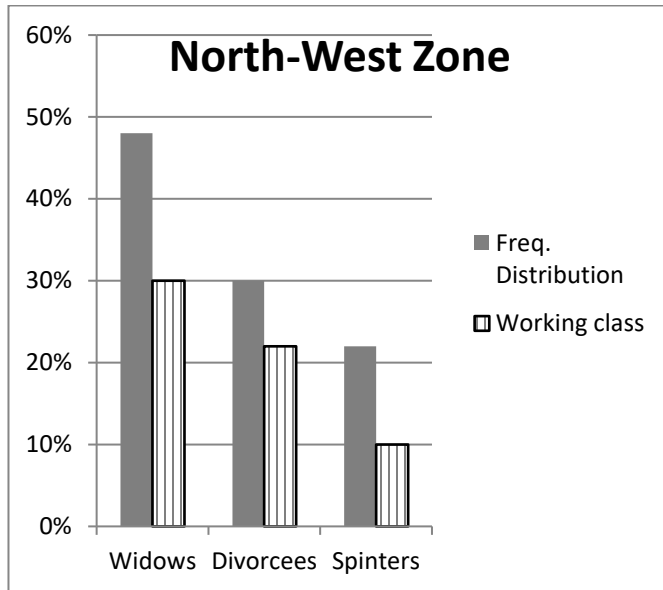


Chart 3: A flow-chart of percentage of widows, divorcees and spinsters in North-West Nigeria.

Findings of the research carried out in the South-West of Nigeria revealed that 48% of the unmarried women in the region are widows and 37% out of the 48% can struggle for survival without the support of a husband. 22% of the unmarried women are divorcees and 18% out of the 22% can struggle for survival without the support of a man. 30% of the unmarried women are young girls who are ripe enough for marriage and 12% out of the 30% can survive conveniently without the support of a husband. By implication therefore, 33% of the unmarried women in the South-West need a husband for comfortable survival as indicated below:

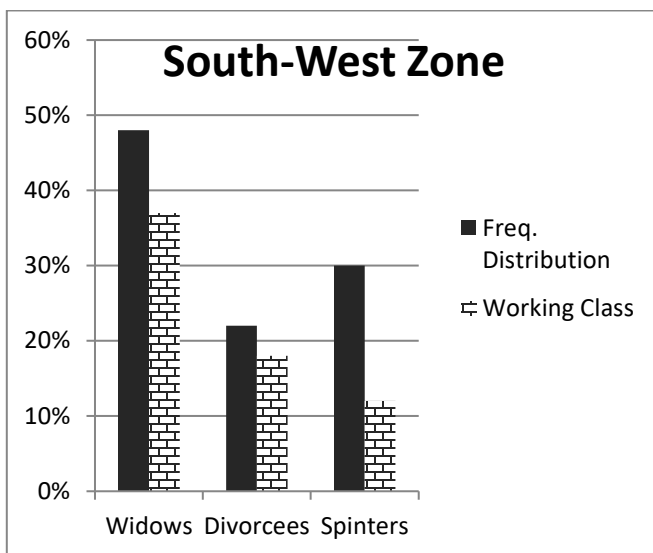


Chart 4: A flow-chart of percentage of widows, divorcees and spinsters South-West capturing.

The interpretation of the above findings is that-64% of the unmarried women in the North-Central of Nigeria can take care of themselves if they have to waive the responsibilities of the husband while 36% need the support of the husband for her survival. In the North-East of Nigeria, 60% of the unmarried women can support themselves while 40% have to be supported for living. In North-West Nigeria, 62% of the unmarried women can support themselves while 38% need to be supported for living and in South-West, 67% of the women can support themselves if the husband is not ready to provide for their basic needs of feeding, clothing and shelter while 33% need to be supported. By implication therefore, 36% of the unmarried women cannot withstand marrying a man who cannot provide fully for their living.

The National Bureau of Statistics (2019) confirmed that 40% of Nigerians live below poverty level and that

women occupy major percentage. Of course, this might be the reason for the percentage of women who are ready to be independent in term of financial responsibility which supposed to be their husbands' duty as a way of being considerate but would prefer just being legally married. In reality, the practice of *Misyār* marriage in Nigeria with such a high poverty index would be an issue for thorough reconsideration because:

1. Islam discourages women from involving in a strenuous job that will not be compatible with their gender nature (Qur'ān, 33:33).
2. Feeding, and clothing of the wife is a responsibility of the husband (Qur'ān, 2:233).
3. The wife must be provided with shelter even when observing her waiting period (Qur'ān, 65:6).
4. The wife has the right to waive any of her matrimonial entitlements (Qur'ān, 4:4).
5. Even without *Misyār*, the wife may not have all the days with the husband. In a polygynous house, she is entitled only to her days in the week or as arranged between the couples.
6. Statistics show that women outnumbered men and so, the need to give attention to the plea of the excess women especially when the level of poverty in the country is making it difficult for many people to go for the mainstream polygyny.

Despite all the above, it must be noted that:

1. The wife has the right to waive the husband's responsibilities, but it should be made optional and not by being coerced or threatened as emphasized in Qur'ān 4:4.
2. The Qur'ān warns that no mother should be treated unfairly on account of her child (Qur'ān, 2:233). If *Misyār* marriage is not properly handled, the mother will end up single-handedly taking care of the products of the relationship.

The high level of poverty made it impossible for a high percentage of the unmarried women to take care of themselves. Those who cannot take care of themselves as indicated in the data analysed cannot involve in the *misyār* of waiving the right to feeding, clothing and shelter. Majority of those who claim they will be able to take care of themselves when married later found it difficult to do.

The possibility of Nigerian men abusing the privilege is very high considering the percentage of responsible and faithful Muslim men in the country, coupled with the high rate of poverty. Notwithstanding, the difficult terrain in the practice of the marriage, authors of this paper disagree with those who consider the practice to be *harām* or even claim that anybody who practices it shall enter hell fire. *Misyār* marriage is as valid as any other valid marriage in Islam because all the necessities of a valid marriage are observed and even though, there is the fear that the practice may be abused, many other valid practices in Islam are also abused. Many Muslims practice the mainstream Islamic marriage without taking care of either the wife or the children and that does not make the marriage invalid but rather, the nonchalant attitude is condemnable. However, considering the peculiarity of Nigeria, the type of *misyār* marriage that can

be practiced in Nigeria must meet up with the following conditions.

- 1) The couple must be sincere with their agreement. Any relationship with deceit is forbidden in Islam.
- 2) The wife should not be forced to forfeit maintenance considering the level of poverty in the country. She can, however, choose to forfeit her right to be visited at any time of her choice but the basic essentials of life should be provided by the husband. By implication, what is practicable in Nigeria is partial *misyār* marriage.
- 3) As regards accommodation, if she decided to remain with her family because she is the bread winner of the family, or as a divorcee, she decides to remain in the house of her former husband because of the large number of the children she has for the first husband and for which the new husband cannot provide accommodation, she should be allowed to do so. Staying in her late husband's house may be morally or culturally wrong, it is religiously right especially if she is in the apartment she inherited from the former husband.
- 4) If at specific intervals, the *Misyār* husband will need to visit his first family and spend days or months with them, that must be agreed to before the contract.
- 5) The type of *Misyār* marriage to be practiced must not be temporal. Once the couples are determined to enter into it, the intention must be that of permanent relationship.

Conclusion

Misyār marriage has gained ground in Saudi Arabia, Egypt and some other countries of the gulf not majorly because men in the region are willing to run away from their responsibilities but because of the increasing number of unmarried women in the region and the consciousness of the Islamic position on any sexual relationship outside an Islamic legal wedlock. It is a fact that the institution of polygyny in Islam is a response to the said social problem but the number of those who are financially qualified to embrace the practice is lesser than the need for the practice.

Notwithstanding the positions of scholars on *nikah misyār*, it is admissible that *misyār* is a product of *ijtihad* which may not necessarily have the acceptance of everybody but the fear for the abuse of the practice or its misinterpretation is not enough to condemn it because it fulfilled all the requirements for a legal wedlock in Islam. Unrestricted public interest could be considered to have been deplored in the adoption of the practice and the relevance of an *ijtihad* in a region may not be applicable to another region or at least, in its totality.

Having considered *misyār* marriage to be legal, the need to domesticate it for the consumption of Nigerian Muslims is necessary. What should be considered as *misyār* marriage is having a legitimate wife or an additional legitimate wife under the condition of being relieved of some of the responsibilities that would have less effect on the wife which could be a waiver of all time presence of the wife or of accommodation where the wife is already in a house of her own and will not want to be far from her children from the first husband if she is a widow or a divorcee.

Misyār marriage that involves the wife forfeiting her right to financial maintenance is not practicable in Nigeria because of the high level of poverty in the country and then fear for the children from the *misyār* marriage. Much as the husband thinks of his convenience in the *misyār* marriage, the convenience of the wife must also be put into consideration and anything that would hurt the wife must be eschewed in arranging for the relationship.

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