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The Newly Emerged Type of Marriage "Misyar":

A Study in Light of the Objectives of Islamic Shari'ah and Algerian Family Law

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Abstract :

This research aims to shed light on a newly emerged type of marriage known as "Misyar marriage," which originated in the Gulf countries. With the acceleration of societal and economic changes, it has quietly made its way into Algeria over the past decade. Scholars have been divided on this form of marriage, with one group supporting it as a means of preserving chastity for men and providing a means of marriage for unmarried women (spinsters), while the opposing group views it as a threat to the family and society. The research has concluded that this type of marriage contradicts the noble aims of marriage and the objectives of Islamic law. The research also delves into Algerian family law and finds that it aligns with the Islamic jurisprudential perspective. Consequently, there is a legal and religious responsibility to curb the spread of this type of marriage as a preventive measure and to address the negative impacts it has had on the depth and structure of society.

Keywords: The newly emerged type of marriage; Misyar ; objectives of Islamic law; Algerian family law.

Introduction:

The family is the fundamental building block of society. If it is sound, society is sound; if it is corrupt, society is corrupt. Given Islam's profound concern for the family, it has surrounded it with a robust legislative framework, governing its establishment, continuation, and dissolution. The Qur'an, in particular, is replete with regulations governing family matters, most notably in Surah "An-Nisa" (The Women) and Surah "At-Talaq" (The Divorce), complemented by "Sunnah" (hadiths and teachings of Prophet Muhammad). These regulations meticulously regulate the relationship between the two pillars of the family, the man and the woman, through the detailed rulings of marriage, designed to achieve the noble aims of marriage. An example of these regulations is what Allah said: "And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely in this are signs for people who reflect" [Qur'an: Surah Ar-Rum: Verse No.21]. Another example is the answer given by the messenger of Allah said when a man asked him: "What right can any wife demand of her husband?" He replied, "You should give her food when you eat, clothe her when you clothe yourself, not strike her on the face, and do not revile her or separate from her except in the house".¹

This grants the wife a lot of rights, including the right to financial support and care, even if she is financially well-off. This is the widely accepted understanding to this day. Due to the gravity of certain newly emerged practices that some laypeople may dare to introduce, scholars have devoted their attention to all matters pertaining to the rulings of marriage and any emerging issues related to it throughout history. With the development that our contemporary era has witnessed, the changing economic and social landscape, and the developed means of communication, "Misyar marriage" has emerged on the societal scene and spread silently. This phenomenon is foreign to Algerian society and has appeared as an imitation of Gulf societies, influenced by the so-called "Salafi Movement." If this phenomenon continues to be ignored by the various official bodies authorized to address religious, legal, and media matters, it will soon pose a significant social challenge that will be difficult to face and mitigate its bad consequences.

Significance of the Study: The significance of this study lies in its potential contribution to the body of knowledge by providing a clear description of this phenomenon, the reasons that lead men and women in Algerian society to turn to this form of marriage, and its impacts on them, their families, and society at large. Moreover, the study sheds light on this issue to enable the adoption of necessary

measures, especially because its impacts have begun to manifest in society through law cases of paternity and inheritance.

Research Problem: To what extent does Misyar marriage threaten the foundations of the family and society? And what are the stances of Islamic Shari'ah and Algerian family law towards this form of marriage?

Research Methodology: This study adopted an inductive-deductive approach by tracing the opinions of scholars and their legal evidence, in addition to analyzing and defining the phenomenon to determine its legal and religious ruling.

Study Chapterization: To address the research problem, this study has been divided into three chapters:

Chapter One: This chapter defines Misyar marriage, explores its causes, and differentiates it from other types of marriage that may overlap with it.

Chapter Two: This chapter examines the opinions of scholars regarding Misyar marriage and the evidence they rely upon.

Chapter Three: This chapter evaluates Misyar marriage in light of the objectives of Islamic Shari'ah and family law.

CHAPTER ONE : THE DEFINITION OF MISYAR MARRIAGE, ITS CAUSES, AND THE DEFFERENCE BETWEEN MISYAR MARRIAGE AND OTHER TYPES OF MARRIAGE

Section 1. The Definition of Misyar Marriage in Lexical and Technical Terms

Firstly: Misyar Lexically

The Arabs say: "sara, yaseer, sayr, tisyar, masira, and sayrourah" to mean the action of walking or travelling. The word "tisyar" is derived from the root "sara" meaning to walk or travel.² Additionally, when the Arabs say "a saying or proverb sara", they mean it has become widespread and well-known. Thus, it is "saa'ir" and "sayyaar".³ The Arabic word "Misyar" is an intensive form of exaggeration based on the Arabic morphological pattern "mif'aal" emphasizing the act of going or traveling.

Subsequently, this form was adopted and used to name this type of marriage where the married man visits his wife whenever he wishes, without prolonging his stay, spending the night, or settling down with her.⁴

Secondly: Misyar in Technical Terms

Early Muslim scholars did not define this type of marriage explicitly. However, several contemporary definitions have emerged. The most prominent of these are:

A marriage contract is established between a man and a woman in accordance with Islamic law, wherein the woman voluntarily waives certain rights

such as the right to accommodation, cohabitation and financial support. Consequently, she does not demand financial support from her husband nor does she require him to spend the night in her house.⁵

It is a marriage that fulfills all its essential elements and conditions. It is contracted through a proposal and acceptance with the known conditions such as the consent of both parties, guardianship, witnesses, eligibility, and agreed-upon dowry. It establishes for both parties the rights resulting from the marriage contract. However, the couple has agreed and consented that the wife will not have the right to accommodation, cohabitation or the right to share her husband with other wives.⁶

"Some scholars argued that the agreement to waive this right can be included as a condition in the marriage contract or established by circumstantial evidence.⁷

It is worth noting that the term "Misyar" is not, strictly speaking, a lexical term. It is a colloquial word used in the Najd region of Saudi Arabia to mean a daytime visit. Subsequently, it was applied to this type of marriage because the husband typically visits his wife during daytime hours.⁸

Section 2. Its Causes:

Researchers have identified a number of common reasons for the prevalence of Misyar marriages across many Muslim countries, including Algeria. These include:⁹

- Spinsterhood: Widespread among older women, particularly those with higher education and careers , especially working women, due to delayed marriage.

- Separation: The separation of a wife from her husband due to divorce or death, considering the increasing divorce rates in Algeria in recent years.

- Polygamy: Men's desire for multiple wives without the financial means to support a traditional second marriage.

- Moral preservation: The desire of men to protect themselves from temptation and lead a chaste life.

- Opposition from the first wife: When the first wife opposes a second marriage, men may resort to a secret Misyar marriage.

Economic growth: Rising standards of living in some countries have empowered women to support themselves and their families, leading them to compromise on certain marital rights.

Instability due to work and travel: Men may turn to Misyar marriages as a result of frequent relocation and work-related instability.

Section 3. Distinctions between Misyar Marriage and Other Types of Marriage

Firstly: The difference between Misyar marriage and ‘Urfi (common law) marriage:

Common law marriage has been defined as a contract that fulfills all legal requirements but is not officially documented.¹⁰ As its name suggests, common law marriage derives its name from being a customary practice that has been observed by members of society since the time of Prophet Muhammad (peace be upon him), his companions, and those who came after them. According to the consensus of scholars, such a marriage does not require the permission of a guardian to marry off a woman.¹¹

With the evolution and complexities of life, and due to the potential for witnesses to forget or deny their testimony, which can lead to difficulties in proving certain matters, especially issues related to lineage, paternity and inheritance, legal scholars have mandated the written documentation of marriage contracts. This is a sound legal policy that serves to protect rights and prevent the denial of such rights.¹²

However, ‘Urfi (common law) marriage has been exploited by those with weak morals and opportunists, leading to a situation where some of the essential elements of a valid marriage are absent, such as the guardian's consent or witnesses. Such marriage is often euphemistically referred to as "a means of preserving chastity" which is a misapplication of the term that is used as a pretext to justify actions under the guise of ‘Urfi (common law) marriage.

A Comparison Between ‘Urfi (Common Law) Marriage and Misyar Marriage:

-Fulfillment of Essential Elements: Both informal and Misyar marriages require the fulfillment of essential elements to be considered valid.

-Permissibility of Intimacy: Both types of marriage permit intimate relations between the spouses.

-Prevalence of Secrecy: Misyar marriages are generally more secretive than ‘Urfi (common law) marriages.

-Lack of Formal Documentation: Misyar marriages are often not formally documented, unlike ‘Urfi (common law) marriage, due to the legal and financial obligations associated with formal marriage.

-Incomplete Legal Implications: Neither type of marriage results in all the legal consequences of a traditional marriage. For example, the right to financial support and shared residence are often negotiated conditions in Misyar marriages.

Secondly: The Difference Between Misyar Marriage and Mut‘ah Marriage

Al-Qurtubi stated, "The scholars of the past and present have unanimously agreed that mut‘ah is a temporary marriage without inheritance rights, and the marriage ends upon the expiration of the agreed-upon term without the need for a

divorce."¹³ Its essential elements are: the contract, the dowry, the specified term, and the wife; neither a guardian nor witnesses are required. The entire Muslim scholars have reached a consensus on its prohibition. However, the Shi'a scholars have seen it permissible.¹⁴

A Comparison Between Mut'ah Marriage and Misyar Marriage:

-Duration: While misyar marriage is not inherently temporary, the likelihood of divorce is high as the couple's duration together is uncertain, leaving it subject to time and circumstances. Mut'ah marriage, on the other hand, is explicitly temporary with a predetermined duration.

-Termination: Misyar marriage is dissolved through divorce, unlike mut'ah marriage which terminates upon the expiration of the agreed-upon term.

-Legal Implications: Mut'ah marriage does not carry the same legal implications as misyar marriage.

-Essential Elements: Misyar marriage requires witnesses and a guardian, unlike mut'ah marriage.

Thirdly: The Difference Between the Misyar Marriage and the Secret Marriage:

The Maliki school defines a secret marriage as one in which the husband instructs the witnesses to conceal it from his wife or from a group of people, even if they are family members.¹⁵ Such a marriage is complete in its essential elements. And the agreement is the mutual agreement of the parties to conceal it. According to the Maliki school, this is a void marriage. As stated in the book (Sharh al-Saghir): "...and the secret marriage is annulled by the act of concealment. Ibn 'Arafa said: A secret marriage is void, and the prevailing opinion is that it is any marriage where the witnesses are instructed at the time of the contract to conceal it... And it is clear from this that one of the conditions for the validity of a marriage is the absence of a conspiracy to conceal it."¹⁶

It is stated in the book (Hashiyat al-Rawd al-Murbba): "What is certain is that a marriage with a declaration is valid, even if two witnesses are not present. However, if it is concealed and witnessed, this is a matter of dispute. If both declaration and witnessing are present, there is no dispute about its validity. If it lacks both declaration and witnessing, it is void according to the majority of scholars."¹⁷

A Comparison between Misyar Marriage and Secret Marriage:

- **Presence of Essential Elements:** Both types of marriage possess the fundamental elements (proposal and acceptance, witnesses, guardian, and dowry).
- **Similarity in Motivations:** The underlying reasons for entering into these marriages are similar.

- **Secrecy and Concealment:** Both forms of marriage involve secrecy and concealment.
- **Absence of Witnesses:** If witnesses are absent in a Misyar marriage and there is no public declaration, the marriage becomes void, similar to a secret marriage under these circumstances.
- **Legal Consequences:** All the legal consequences of a secret marriage apply, in contrast to a Misyar marriage.

Therefore, based on these explanations and comparisons, we observe an overlap between the various types of marriages mentioned, including Misyar marriage, with significant distinctions. All of these forms of marriage involve complexities and potential harms that are evident to anyone.

CHAPTER TWO: SCHOLARS' OPINIONS ON MISYAR MARRIAGE AND THEIR EVIDENCE

The Scholars' Opinions:

After clarifying the concept of Misyar marriage, a significant question arises regarding the requirement of waiving the right to financial support (maintenance) and cohabitation. Contemporary scholars have presented two differing opinions on this matter:

The First Opinion: It is permissible but disliked.

The Second Opinion: It is prohibited.

Section 1. Those who said that Misyar marriage is permissible but disliked and their evidence:

Among those who hold this opinion are Dr. Yusuf al-Qaradawi, Dr. Wahba al-Zuhayli, Sheikh 'Abdullah al-Manei', and Sheikh Ibn Baz.

Al-Qaradawi states: "I am not one of those who encourages Misyar marriage. I have never given a lecture encouraging people to enter into Misyar marriage... Some of those who opposed it disliked the matter, and I agree with them that I dislike it. I see that it is permissible but disliked... and I fear that there may be harms associated with it."¹⁸

"Sheikh al-Manei' stated: "I do not see a clear argument for prohibiting this type of marriage, although I dislike it and consider it demeaning to women and their dignity. However, it is her right, and she has consented to it, waiving her right in this matter." However, Sheikh 'Abdullah al-Manei' criticized those who argue for its prohibition, arguing that it does not have negative consequences but rather protects women, preserves their chastity, and prevents them from deviance."¹⁹

Sheikh Ibn Baz argued that, provided the conditions for a valid marriage contract are met, there is no impediment to the husband and wife agreeing that the woman

remains with her family and has visitation rights during specific days or nights, as long as the marriage is publicly announced.²⁰

Al-Zuhayli, on the other hand, views this type of marriage as undesirable because it falls short of the objectives of marriage in the Islamic law.²¹

Some of their evidences:

1-The general governing principle in Islamic contracts, including marriage, is permissibility. Thus, any contract that fulfills its essential elements and legal conditions is valid. However, it has been argued that the best interests served by the marriage contract necessitate greater precaution than other contracts. The wise Lawgiver has exercised utmost caution in matters pertaining to sexual relations.

2-"Allah says: "And if a woman fears from her husband either neglect or abuse - there is no blame upon them if they reconcile between themselves in a way that is good. And reconciliation is better." [Surah An-Nisa: Verse No.128] This Qur'anic verse signifies that it is permissible for a wife to reconcile with her husband if she fears he might divorce her, by mutually agreeing to waive certain rights, such as her right to maintenance, her turn for cohabitation, or by gifting her turn to one of this husband's wives, or by any other means that falls within the general scope of the verse.²²

3-The Prophet, peace be upon him, said: "Muslims are bound by their agreed-upon conditions, and reconciliation is permissible among Muslims," and he also said: "The most worthy conditions to be fulfilled are those by which you make sexual intercourse lawful for yourselves (in marriage)."²³

Therefore, if both spouses agree to waive some of their rights, there is no harm in that as long as the contract fulfills its essential elements."²⁴

4- Lady Sawdah bint Zam'ah, may Allah be pleased with her, one of the wives of the Prophet, peace be upon him, relinquished her night to Aisha, may Allah be pleased with her. Aisha narrated: "Never did I find any woman more loving to me than Sawdah bint Zam'ah. I wished I could be exactly like her who was passionate. As she became old, she had made over her day (which she had to spend) with Allah's Messenger, peace be upon him, to 'A'isha. She said: I have decided to donate my day (turn of cohabitation) with you for 'A'isha. So Allah's Messenger, peace be upon him, would spend two days with 'A'isha, her own day (when it was her turn) and that of Sawdah."²⁵ It has been debated that the relinquishment occurred after the marriage and was not a prior condition or agreement between the parties. The reason is that Lady Sawdah had advanced in age and feared that the Messenger of Allah, peace be upon him, might divorce her, so she donated her turn of cohabitation for Aisha. Furthermore, the donor has the right to revoke the gift at any time.²⁶

5-It is permissible on the ground that it helps preserve chastity and moral integrity for both men and women.

Section 2. Those who argue that Misyar marriage is forbidden and their evidence

Among those who have ruled that this marriage is prohibited are: Dr. Omar Suleiman Al-Ashqar, Dr. Muhammad Al-Zuhayli, Dr. Muhammad Abdel Ghaffar Al-Sharif,²⁷ and Dr. Ali Qorrah Daghy,²⁸ and others. They argue that although Misyar marriage may appear to fulfil the legal requirements of Islamic marriage, its essence contradicts the objectives of Islamic law regarding marriage.

Some of their evidence are:

The contract of Misyar marriage includes conditions that contradict its purpose.

The general governing principle is that women's sexual organs are inherently forbidden. Therefore, greater caution must be exercised in matters of marriage than in other contracts.²⁹

The form of this marriage contract is outwardly valid, but its essence contradicts the objectives of Islamic law and is closer in purpose to Mut'ah marriage (temporary marriage).

Numerous negative consequences arise from this type of marriage, including:

- ❖ **Instability:** The wife experiences a state of constant unease and anticipation of divorce, fearing that the husband will tire of her and easily replace her with another.
- ❖ **Negative impact on children:** This type of marriage negatively affects children and undermines the concept of fatherhood, reducing parental care, supervision, upbringing, and ongoing support throughout various stages of life.
- ❖ **Undermining family structure:** Misyar marriages erode the foundation of the family, obliterate its identity, and threaten its existence.
- ❖ **Discouraging traditional marriage:** This practice discourages individuals from engaging in traditional, recognized Islamic marriages.
- ❖ **Violation of justice among wives:** This contradicts what Prophet Muhammad said: "Whoever has two wives and inclines towards one over the other will come on the Day of Resurrection with one side of his body sagging".³⁰ This highlights the importance of treating all wives justly, a principle that Misyar marriages often violate.
- ❖ **Reducing marriage to a single purpose:** Misyar marriages reduce the purpose of marriage to mere sexual satisfaction, disregarding the other noble objectives that Islamic law aims to achieve through the family as the cornerstone of society. The family is built on the foundations of virtue,

cooperation, and cohesion, and plays a vital role in the continuation of humanity. How significant is the family in the context of Misyar marriages?

- ❖ **A loophole and evasion:** Misyar marriage is often seen as a way to circumvent the requirements of traditional Islamic marriage for selfish purposes.

The rights to cohabitation and maintenance cannot be waived, as they are rights that have not yet become legally binding obligations. These rights cannot be waived as an exception, given that personal rights, such as the right to retaliation or the right of preemption, can be waived.³¹ A woman's relinquishment of certain rights does not necessarily stem from her full consent but is often due to her need for marriage. In such cases, the woman is more like someone who is forced to do so.

Contracts are judged by their intended purposes, not merely by their forms. Therefore, the marriage of a thrice-divorced woman to a man who then divorces her so she may remarry her former husband known as *Zawaj al-Muhallal* (marriage of the intermediary) is prohibited, even though its form may be legally sound. Similarly, jurists have prohibited the sale of weapons during times of strife, even if the sale meets all the legal requirements. By examining the objectives of Islamic law in prohibiting these actions, we find that they aim to prevent the harmful consequences that would result from such contracts.³²

CHAPTER THREE: MISYAR MARRIAGE FROM THE PERSPECTIVE OF ISLAMIC OBJECTIVES AND FAMILY LAW

Section 1. Misyar Marriage in the Scales of Islamic Objectives:

Upon a thorough examination of scholarly opinions, their supporting evidence, and the objectives of Islamic law, it becomes evident that Misyar marriage cannot be classified as a form of polygamy. Rather, it serves as a convenient alternative that dissuades men from engaging in the legitimate form of polygamy as exemplified by the Prophet Muhammad, peace be upon him. Misyar marriage is characterized by a lack of commitments towards the wife and family, rendering it a distorted form of polygamy for the following reasons:

The lack of clarity surrounding this type of marriage and its various forms make it difficult to categorize under a single ruling.

Although some courts have documented the conditions stipulated in the marriage contract, many divorces result from the wife's subsequent realization of the true nature and benefits of married life, leading her to demand her rights and equitable provision, and equitable share of cohabitation .

Misyar marriage may be a partial or temporary solution in certain circumstances, but it is not void of numerous drawbacks and negative

consequences. Considering it an exceptional solution to achieve certain benefits can lead to harmful repercussions, including:

Misyar marriage is a tool exploited by the morally corrupt to indulge their desires.

It serves as a means of exploiting women's circumstances and their need for marriage.

It undermines the foundation of the family by neglecting fundamental concepts such as headship, obedience, guidance, and responsibility.

It has a negative impact on the psychological, social, and emotional fulfillment of children, leading to the feelings of inferiority and the development of aggressive tendencies.

The potential and actual harms of Misyar marriage outweigh its benefits. The prevention of harm takes precedence over the pursuit of benefits, especially when considering the objective of preserving lineage and the related objectives.

The general governing principle regarding sexual relations with women is prohibition as a precautionary measure to block the path to potential harm. Permitting it opens the door to widespread evil.

Although Misyar marriage may be formally valid, its substance is defective as it contradicts the objectives of marriage. The essence and underlying intentions of contracts, rather than their mere form and structure, are the matters that should be considered.

Section 2. Misyar Marriage from the Perspective of the Family Law:

Firstly: Misyar marriage in Algeria

The phenomenon of Misyar marriages has infiltrated Algeria, disguised as a solution to the problem of spinsterhood. Dedicated websites, smartphone applications, university campuses, and even the working women and the highly educated class who have delayed marriage have become platforms for this phenomenon.

Professor Abdullah Tamin, Media Advisor at the Ministry of Religious Affairs, stated: "Misyar marriage in Algeria is classified as a prohibited sexual relationship as this relationship is unregulated. It is considered an illicit relationship."³³

Further exacerbating the situation was a purported fatwa attributed to the Ministry of Religious Affairs and Endowments in 2012, which allegedly permitted this type of marriage under certain conditions. This was swiftly seized upon by certain media outlets and opportunistic websites. However, the Ministry of Religious Affairs issued a statement categorically denying the authenticity of such a fatwa. Dr. Bouallam Allah Ghulam Allah asserted that: "The ministry has not issued a fatwa permitting Misyar marriage in Algeria, nor has the ministry's

fatwa committee ever issued a fatwa on its permissibility, neither in response to individual or institutional inquiries, nor through the official website, nor through its provincial scholarly councils." ³⁴

In a field study conducted by a researcher on a sample population in Jijel Province, it was found that over 78% of women believe that Misyar marriage does not provide security for women, 90% believe it is exploitative of women, 78% agree that this type of marriage leads to the deprivation of children from a sound upbringing, and 73% believe it is a marriage destined to end in divorce. ³⁵

Although general indicators suggest apprehension and aversion to this type of marriage, a significant proportion ranging from 20% to 30% do not see any harm in it. This is a substantial percentage that warrants alarm.

Secondly: The Perspective of the Family Law

Family Law does not explicitly address Misyar marriage. Therefore, we will approach this topic through the principles established in the law regarding marriage and polygamy.

The Algerian legislator has dedicated the first chapter of the Family Law ³⁶ to the issue of "marriage" and defined it as: "A consensual contract entered into between a man and a woman in a legally prescribed manner, with the objective of forming a family based on love, mercy, cooperation, and the preservation of chastity for both spouses and the lineage" (Article 4). Furthermore, Article 9 bis stipulates the following conditions for marriage:

Capacity for marriage.

Dowry.

Guardian.

Two witnesses.

Absence of impediments to marriage.

Given that Family Law is derived from Islamic Shari'ah, it has adopted the practice of polygamy under certain conditions. The law stipulates: "Getting married to more than one wife is permitted within the limits of Islamic Shari'ah, provided that there is a legitimate reason and that the conditions and the intention of justice are met. The husband must inform both the previous wife and the woman he intends to marry, and must submit a request for a marriage license to the court president in the jurisdiction of the marital residence. The court president may grant permission for the new marriage if he is certain of the consent of both women and if the husband proves a legitimate reason and his ability to provide justice and the necessary conditions for married life" (Article 8, as amended). Furthermore, Misyar marriage contravenes the conditions for polygamy as it is often conducted clandestinely and lacks justice. As it is well-known, marriage is a social act that fulfills numerous objectives, which Misyar marriage notably

lacks. These objectives are outlined in Article 36 regarding the rights and duties of spouses (as amended):

Maintaining marital bonds and fulfilling the obligations of shared life.

Cohabitation with kindness and mutual respect, affection, and compassion.

Cooperating in the interests of the family, caring for children, and providing them with a good upbringing.

Consulting on the management of family affairs and spacing births.

Treating each other's parents and relatives with kindness, respecting, and visiting them.

Where, then, can these obligations and rights be exercised in a Misyar marriage? The answer is clear: they are completely nullified and have no place.

Additionally, the right to maintenance is forfeited, followed by the collapse of guardianship or headship and its related rights. Thus, the pillars of marriage begin to crumble one by one, leaving only the name of marriage as a mere formality.

Legal experts argue that all marital relationships, regardless of their name, should be documented. This is essential because legal consequences arise in the event of the dissolution of the marital bond. The wife has the right to maintenance and housing, as explicitly stated in Algerian family law. Therefore, even if a woman waives her right to housing and maintenance in a Misyar marriage, the law does not recognize this type of marriage. Consequently, in the event of the dissolution of the marital bond, especially when there are children, all rights such as maintenance and the right to housing or rent allowance will apply. However, the problem persists when the marriage is not documented. The woman finds herself navigating the complexities of the legal system to prove 'Urfi marriage (a common-law marriage) and establish paternity, leaving both the woman and the children victims of a marriage that was destined to fail from the outset.³⁷

Consequently, if the marriage is documented, the problems become more manageable and can be resolved. However, if it is not documented, the law does not protect this marriage as it is considered an illicit relationship. "Judicial sources have reported that more than 4,500 cases of Misyar marriages and Mut'ah marriages (temporary marriages) were brought before the courts in 2006. Studies conducted by a research team at the National Center for Analysis have also revealed the birth of five thousand children outside the framework of a formal legal marriage, with the highest percentages attributed to 'Urfi marriages (common-law marriages), Misyar marriages, and marriages based solely on reciting the Opening Chapter of the Holy Quran (Surah al-Fatihah)." ³⁸

Conclusion:

Firstly: Study Findings

- Misyar marriage has emerged as a widespread phenomenon in certain Muslim societies, including Algerian society.
- Misyar marriage differs from other types of marriage with which it is often intertwined, such as Mut'ah marriage (temporary marriage), secret marriage, and 'Urfi marriage (common-law marriage).
- The preponderance of scholarly opinion is that Misyar marriage is prohibited due to its contravention of the objectives of Islamic law pertaining to marriage and its numerous harms that outweigh its perceived benefits.
- Algerian family law does not explicitly address Misyar marriage but governs it on the ground of the principles established in other articles, ensuring the protection of women's rights as long as the marriage is officially documented.
- The emergence of challenges related to proving paternity and other rights, such as inheritance, has arisen as a consequence of this form of marriage, in addition to its severe and detrimental psychological and social impacts on spouses, children, and the fabric of family relationships.

Secondly: Recommendations

- **The Ministry of Religious Affairs and Endowments** must take a definitive stance on this complex issue and counter the widespread fatwas disseminated on social media by those who import fatwas from other countries and spread them among young people and university students. They exploit the dire circumstances, the vulnerability of women, female employees, and those delayed in marriage.
- **There is an urgent need to legislate** legal articles in the Family Law related to this issue to prevent the violation of rights (rights of wives and children) and honor.
- **Scholars, preachers, reformers, and sociologists** must cooperate to find alternative solutions that are closer to Islamic law and its objectives, instead of succumbing to the realities of the modern era and the pressures and demands of the public, who are always seeking the shortest and easiest ways. These solutions are often tainted by suspicion of deceit and are not free from selfishness, irresponsibility, and a failure to foresee the future consequences that may undermine the fabric of society and its stability and chastity.

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