

Misyar Marriage

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This article deals with a special kind of marriage in Islam known as the Ambulant marriage or the *Zawaj al-Misyar*. So what is the ambulant marriage? Does it abide by *shari'a* law as applied in the Muslim world? What is the difference between misyar marriage and other recognized Islamic marriages? What do women achieve by entering into such a marriage and what do they lose?

A Brief History of the Misyar Marriage

The first appearance of this form of marriage contract dates back to 1985. The misyar marriage originated in Saudi Arabia, and by 1995 it had become a social phenomenon and had spread to Egypt and to other parts of the gulf region such as Kuwait, Bahrain, the United Arab Emirates and Qatar.

The misyar (a word used in the Saudi dialect) marriage or a 'marriage in passing' is the literal meaning of the word (which means visits between neighbors). This form of marriage took the name of misyar because the misyar husband usually visits his misyar wife during the day which resembles to a certain extent visits among neighbors. The visitors do not pay long visits, and the misyar husband does not stay long at his misyar wife's home. In short, the misyar marriage came to be known by the short visits of the husbands in the same way that neighbours pay short visits.

The way to contact the marriage broker is through a fax machine connected to a tape recorder. The voice the caller hears addresses him as such: "My dear brother, may God help you find a wife to compensate for your distressed life. You have to know that your broker will charge you five thousand riyals for a virgin and three thousand riyals for a non-virgin"

What is the misyar marriage all about? How is it conducted? What are the conditions of the misyar contract and when does it become nullified? What is the role of the women brokers? What are the circumstances in which women go through this marriage? Who are those who get into this contract and what do women expect or achieve in the misyar marriage? What is the status of the women who undergo this marriage? What

happens if the woman gives birth to a child from a misyar husband? What happens if the man dies? Will she inherit him, or if she dies will he inherit her? What are the conditions imposed by the men and what do they usually expect from this marriage?

This kind of marriage demands firstly, the consent of the misyar wife to stay at her parents' house, which implies absence of cohabitation. She accepts that her husband visit her during certain daytime hours which are specified in the contract. Secondly, the misyar wife consents to the fact that her ambulant husband is not responsible for her economically. This means that the misyar wife will not impose financial responsibilities on her husband. Thirdly, the misyar wife accepts the fact that her marriage should not be publicized and should remain in secrecy. Hence, the misyar wife gives up, of her own accord, her right of cohabitation and *nafaqa* (financial support), which are normally the responsibilities of the man in a patriarchal Islamic society.

Thus, one could say that the misyar is a marriage without commitment. Since the Saudi Arabian government offers financial help for bachelors who want to marry, married men are more naturally the ones who opt for this misyar marriage. The misyar husband is usually a married man and has responsibilities towards his family. Accordingly, he keeps his misyar marriage in secrecy in order not to mess up his relation with the mother of his children .

Because of increasing economic obstacles, the ambulant marriage offers a good solution to the high costs of the *mahr* (bride price) of brides in Saudi Arabia. The women who usually undergo such a marriage are women who have grown a bit behind the marriage age or those who are divorced, and the vast majority of these women belong to the middle and lower classes.

Misyar and the Shari'a

The Quran, to begin with, allows polygamy in certain areas and on certain conditions. According to the Islamic *shari'a* law, a man can have up to four wives at any onetime provided that he treats them equally.

Equally, that is, they should all be provided with the same homes and matrimonial visits. The misyar marriage for one does not conform to the law. The absence of cohabitation and support differentiate this marriage from the permanent marriage. If, according to the Hanbali school (which governs the personal status law in Saudi Arabia), the marriage contract recommends publicity, it does not make it legally mandatory, and thus the misyar marriage does not contradict the *shari'a*.

In Islamic law, extra-marital affairs are forbidden and those who commit them are punished by flogging or stoning. Thus marriage is the legal institution in which sexual intercourse between couples is legalized in the eyes of God on the one hand, and the society on the other. Within this context, what is the personal status law concerning marriage and divorce according to Islamic *shari'a* and how much does the misyar marriage abide by the Hanbali school, which governs the personal status law in Saudi Arabia?

For a marriage to take place and be recognized according to the *shari'a* and the Islamic law, the marriage contract should be embodied by a set of pillars and statutes. The absence of the first set, namely the pillars, nullifies the marriage contract. However, the statutes are only considered to be the regulators of the rules that govern the contract. So, the answer as to whether the misyar marriage follows the strict rule of Islam is to be foremost looked upon from this angle.

The pillars of the marriage contract according to the Hanbali School are four. The first is the formula (or the *sigha*) in which the contract becomes legalized. In the contract there should be both declaration (*ijab*) and acceptance (*qubul*). The woman declares that she is entering into a marriage relationship with the man and the man in return accepts her as his wife. The first point is true about the misyar marriage. Within the context of this pillar, the misyar marriage follows this formula where both the wife and the husband declare and accept the marriage. Accordingly, the misyar abides by the rule of the *shari'a*.

The second pillar concerns the persons one is allowed to marry (*mahal*). The candidate should not marry his daughter, sister, nieces, aunts, nor his ex-wife's son, or his father's ex-wife. Here again the misyar marriage also abides by this condition, and, subsequently, is in conformity with the officially authorized marriage contract.

The third pillar of the contract is the presence of a guardian or (*wakil*). According to the Hanbali School, the guardian can give a virgin in marriage without her consent, but he has to take the permission of the women who had already married before. In the case of

the misyar marriage, the bride's guardian should be present. In this condition, too, the misyar abides by the *shari'a* rule.

The fourth pillar is the presence of two witnesses when the marriage contract is signed. According to the Hanbali school, the presence of two witnesses is a pillar of marriage and without it the marriage contract is not valid.

Many *fatwas* have been issued concerning the legality of the misyar marriage. At the beginning Sheikh al-'Athemain, who lives in Saudi Arabia, made a distinction between the legal aspect and the moral or social consequences of the ambulant marriage. Nevertheless he did not say that it is against the *shari'a*; however, what scholars fear, are its dangerous and unpredictable social consequences.

According to Sheikh al-'Athemain, the misyar is a lawful marriage since it includes a contract, a declaration and a dowry. However, within this marriage, the fact that the misyar wife gives up her rights of cohabitation and *nafaqa* can have unpleasant consequences.

Sheikh al-Yusef Qurdawi, legalized the misyar in an interview on the Jazirra channel. His justification was that it is in compliance with the pillars of the marriage contract of declaration, acceptance and the presence of witnesses. Moreover, al-Qurdawi says that although *nafaqa* or support is one of the responsibilities of the husband towards his wife, it does not represent a pillar that would legalize a marriage. For in Islam, men are considered to be in charge of women (*qawama*); nevertheless, when the wife gives up her right of *nafaqa* voluntarily, the contract becomes lawful.

An important fatwa in 1996 ended the debate on the legality of the misyar marriage when the Grand Mufti of Saudi Arabia, 'Abed al-'Aziz Ibn Baz, legalized it.

In the adoption of the misyar as a legal marriage, Saudi Arabia is not in the process of changing its distinctive conservative society. Keeping in mind that women are still not allowed to drive, to go out without wearing their *chador*, the misyar marriage falls within and under the Islamic *shari'a*, or more specifically the Hanbali Law that governs Saudi Arabia.

According to Sheikh Qurdawi, the marriage is valid since it abides by the rules, yet, one can distinguish between its legal and social implications. Those who oppose the marriage say that the misyar legalizes mistresses and lovers, and the fact that it is contracted in secrecy makes it illegal. However, supporters of the misyar say that the presence of the witness is enough to rule out secrecy.

The Debate for and Against the Misyar Marriage

The debate for and against the misyar was discussed overtly in the year 1998. In the intervening time, it faced strong opposition from scholars within Egypt and especially from al-Azhar University. Nevertheless, its defenders say that as long as it is in conformity with Islam and gives a chance for women who cannot find husbands, it is a good bargain.

Those in support of the marriage say that recent social developments and the new mode of life has postponed the marriage age of women, which has resulted in many women ending up unmarried. This is why people who hold this view justify such a marriage by quoting the Quranic verses: "Do not prevent women from marrying." Hence, in order not to allow them to commit sins it is better for them to marry.

Furthermore, many businessmen support this marriage. Men believe that it provides them with a lawful marriage in a conservative Saudi society where sex outside the institution of marriage is considered a great taboo, and for many women it is better to be married than to remain spinsters or divorcees. Furthermore, this marriage offers a better solution for women since women in the patriarchal society are not protected unless they are married and unless they give birth to children. Men too are not opposed to the marriage since it goes along with their right to marry up to four women at the same time.

Those against the marriage say that women are being abused. In return for a husband, she is made to willingly give up her right of cohabitation and *nafaqa*. Intissar al-'Ageel, a female columnist, says that the misyar is an insult to the institution of marriage. For her the misyar marriage is a marriage that deceives women, turns them into legalized mistresses, and disregards their rights.

Furthermore, those against the marriage say that conflicts might arise if the first wife learns about the marriage, which means another breakdown of family bonds. Another problem is that its secrecy is a hindrance to Islamic jurisprudence. The misyar is a marriage with no publicity and declaration. However, according to the Hanbali school the husband can marry without telling his first wife, unless it is an inherent clause in the marriage contract that she should be told. Furthermore, those against the marriage say that a secret marriage, which means a secret sexual relation, is not acceptable particularly that it does not provide cohabitation.

Social Implications of the Misyar Marriage

Does the structure of concealed marriages for women in the Arab world, especially in Saudi Arabia, the Gulf

region and Egypt, provide women with security or a degree of communal satisfaction? The misyar marriage does away with the familiar roles played by men and women, the man being the provider and the head (*qawama*) of his family, and the woman being the mother of the children.

As early as 1996 the Saudi Sheikh Mohammad Ben Saleh al-Atheman refused to allow the continuation of this marriage because of the dangerous social impact or consequences of such a marriage. In his view, the best form of marriage is that in which the couple stay together and the husband enjoys his wife, the mother of his children. For in the case of the different misyar marriages and the many possible children, the father do not know his children, and the children do not know their father or their brothers and sisters. There is also the possibility that children from the permanent marriage will make fun of the misyar children and accuse their mother of immorality. What many people do not like about this marriage is that it is contributing to a change in values and to what is considered socially appropriate or not.

Conclusion

Finally, one could say that within the ambulant marriage, a woman is at a disadvantage in the sense that she has to give up her rights of *nafaqa* and cohabitation knowing that her husband is there with another woman who is at the same time deceived thinking that her husband spends his days at work.

In such a marriage, the woman will always be at the man's mercy or to put it more bluntly, she will always be there according to his whims. The mere fact that she has accepted to marry without her rights of mahr, *nafaqa*, etc. will be a constant reminder that she is desperately in need of a man, and has accepted to be treated as a sexual object.

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