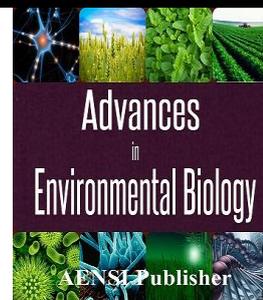




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### Investigate the Misyar Institution in the Islamic Legal System

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#### ABSTRACT

One of marriage prescribed in Islam, marriage is a concubine so that its legitimacy is accepted by all Muslims in Islam but after the sanction of temporary marriage, the second caliph, Muslims were divided into two groups. One group believed that the manuscript and the sanctity of marriage ruling concubine and other groups that are not licensed versions of it. The second group, Shia believes that is not divine decree abrogated by any other person and only prophet can abrogate the divine decree. As a result, the second caliph not authorized to perform this action. On the other hand, there is no legal justification based on the sanctity of marriage concubine Reply it even has an inferred resource of legitimacy established by the laws of the Koran, tradition, reason and consensus this number, order the withdrawal of the current contract and Sari know to date and they will respond in detail to the arguments of the Sunnis in his place. Since people do not know the legal tradition of temporary marriage so they have proposed marriage "Misyar" to respond to the needs of young men and women. Misyar a marriage that has become increasingly popular in recent years in some Islamic countries and it has been welcomed by Arab men and women and it is further confirmed by Shia and Sunni scholars. Based on these assumptions, Misyar marriage is the same as other temporary marriage, it is an alternative to marriage and that marriage and Misyar to satisfy instinctive (sexual) of the solvent and it has a purpose. Misyar finally reached the conclusion that marriage is a kind of permanent marriage, but it is quite similar in purpose and result of temporary marriage.

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#### INTRODUCTION

Generally during the marriage, couples can give each provided that the conditions are not opposed to Sharia and degradation of the condition; it is not illegal (such as alimony, settlement, Mabit). The Messenger of Allah (PBUH) said: All the Muslims are forbidden from engaging in a lawful only if it or solvent has a forbidden. In condition of Misyar marriage, any solvent property was not forbidden and any forbidden property was not solvent. On the characteristics of marriage Misyar have to say that marriage is a marriage Misyar and emerging phenomenon in the Arab and Sunni brothers as in nature, it is a kind of permanent marriage but given the circumstances that will be mentioned later in the article, which is similar to the purpose and principles of temporary marriage and features should be outlined and defined as follows: What is special attention given to Misyar, undoubtedly it is a condition of the contract and the parties over the rights to marriage as perhaps they are fundamental and with the characteristics and circumstances, they have a safe and legal purposes as it is very difficult to satisfy the sexual instinct and a family without the hard way that marriage for young people today. We will mention the following terms of this contract.

##### Condition of marriage Misyar:

In the case of marriage Misyar must say that this marriage is like any other marriage common among Sunni brothers and with some nuances as it relates to situations where the parties to the contract of marriage leave. There is disagreement among contemporary scholars of Sunni Misyar about marriage, some consider it lawful, some forbidden and some consider it to stop.

##### Marriage of Misyar:

The name of this type of marriage in general no need to look for marriage in the common law and by this we know that this kind of marriage is like a permanent marriage and a pillar of the effects of marriage after this

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introduction, we examine the effects of marriage on this article the rest of it is actually included provisions orders for non-interference in the discussions we have.

#### *Inheritance in Misyar:*

According to a study conducted Misyar have to say that marriage is a permanent marriage. Of course we will study the differences in the conditions of contract in different parts of its own we will stop at this point for an unrepeatable topic and it is quite similar to the inheritance among married couples permanent the woman inherits from her husband in marriage Misyar and is subject to general rules of inheritance in Islamic jurisprudence, although sometimes it is seen that the parties to the marriage at the marriage of their right past this Stipulation that fact is that the sentences and works that leads to the nature of the contract or passes from the right to the heirs with all their inheritance.

#### *Offspring of Misyar:*

In this case there is a general rule no difference in the principles of Jurists and it is among all those who are in favoring marriage Misyar, there is the idea that marriage is a permanent marriage. Regardless of the form and its objectives, according to the terms and provisions of the pillars and permanent marriage, all legal and religious works of the children resulting from this marriage be legal and child and join them in every way according to Islamic law under the parent and other specific terms and conditions subject to which the parties have agreed in the contract [4].

#### *Alimony in Misyar:*

In this case, as mentioned in the previous sections, it is the responsibility of the husband's alimony laws in accordance with the terms of the pillars and permanent marriage unless the contrary is provided. As stated in the definitions, interpretation of these definitions is to be Misyar with conditions such as the right to housing, we find that in fact the marriage despite the appearance of maintenance is the responsibility of the husband but in most cases, the parties do not pay any alimony as temporary marriage so that they are separated. As not alimony if the marriage unless the condition is temporary, alimony is not provided unless otherwise provided in Misyar [2].

#### *Misyar marriage comparison with other marriages:*

##### *Misyar and permanent legal marriage:*

Misyar marriage is permanent differences there is support abortion rights and his wife reside in Misyar condition the male to female ratio is president and Management and women living in the house or out in the open.

##### *Misyar and permanent customary marriage:*

It is customary marriage as a permanent legal marriage, with the exception that they do not record it. Thus, defects in marriage is common in nature, it is recorded that all the provisions of the contract and the elements of the legal and religious works and it can be applied as proof of the right to alimony and Mabit. Thus the difference between these two married is the proof of the right to alimony and Mabit in the customary marriage and the lack of evidence in the Misyar marriage. Of course this does not mean that marriage is a marriage in Misyar can not customary, but if the marriage is not registered it is known as customary marriage, provided that there is a condition known as Arkan and the right to marry [6]. In comparing the two types of marriage, it should be noted that according to the opinion of some jurists and lawyers, denying and the nature of marriage and enjoyment of the marital relationship and if in spite of this restriction is void or couples. It also leaves the family for more than four months of the causes of divorce. Also, dismantled condition in the right to alimony is not permitted by man. However, the married person's action or termination of alimony to his gift as this is a place of reflection because many financial overlook the urgency of the wife. The concept can be transformed Nashoz and compliance Misyar marriage without providing a new definition of these concepts. The failure to register the marriage is no longer a problem, though, is always compulsory registration of marriages in most Arabic countries.

##### *Misyar and Temporary Marriage:*

Temporary marriage is a marriage relationship that is established parity between men and women within the specified period. Sunni perspective, the marriage is null and void because they believe that it is in a condition for the validity of marriage to a non-temporary. Imami perspective, marriage is a legitimate and valid marriage and it works, and certain fruits and legislation to address some of the needs and demands of society. The Sunnis also agree on the basic legitimacy of marriage but they believe that the sentence was abrogated the provisional license after a while. Misyar and temporary marriage are similar in some ways and different in others: similar way in both the married woman has no right to alimony, sort and Mabit and couples not inherit from each other,

as well as the woman out of the house does not need to rent a husband. Difference whatsoever in marriage, during marriage shall be determined and specified in the contract would result in the invalidation of the seal but the term is not defined in the Misyar marriage and signed a permanent contract and set a seal is not required in the contract. While the marriage ended in divorce Misyar marriage is done with expiration or paying. Misyar marriage quorum of four women as permanent marriage, but there is no limit on temporary marriage. So the fate of marriage, the wife is deposited for a period of time known. The woman can be removed from the shackles of parity with mostly short-term need, whenever you wish to have. But Misyar marriage, women's waiver of rights, but since it is a permanent contract, for separation should he divorce her husband and this leads to the oppression of women [5].

#### *Misyar and marriage day and night:*

Old scholars have mentioned the name of a wedding day or night in this way a man marries a woman who works the night outdoors and goes on to husband or she works day and goes back to home and the husband at night. Nevertheless, there are differences between authorized and unauthorized Sunni scholars about it (marriage day and night). Some believe that the legal and some illegal.

## RESULTS AND DISCUSSION

#### *An overview of the pros and cons in Misyar marriage:*

Some people believe that a marriage Nikah Misyar correct and legitimate, but there is disagreement about the conditions. Some consider all the circumstances it correctly some people know right and wrong and to know the conditions of the marriage it (such as alimony and Mabit dismantled condition) and they deserve to have their wife to ask [1].

#### *Shia scholars consider about Misyar:*

Misyar marriage is a marriage that has become increasingly popular in recent years in some Islamic countries and among Sunnis for this reason; it is the review of jurists and scholars although some Shia scholars have studied jurisprudence it including Ayatollah Morteza Motahari, Ayatollah Makarem Shirazi.

#### *Proponent views:*

Given that there is a dissenting opinion on the interpretation of the scientific community and seminaries Misyar marriage among Shi'ite jurists courses Fiqh and also some big names and Shiite clerics have to teach this kind of marriage legislation as they are in all the authority of Shiite Ayatollah Makarem Shirazi, Ayatollah Sobhani and etc. However, according to the study done about marriage in general can be seen that marriage that has all terms of accuracy, it is not reason to reject by Shiite clerics. In this regard, Ayatollah Makarem Shirazi says: conjugal that is all situations, including temporary, permanent marriage, dowry and witnesses, after all requirements are gathered and correct. It is not true that we've had questioned the validity of the marriage of a woman with passing some of your rights, including alimony, kind, housing, and others. This is because property rights of women and the right to use in a nutshell, we can say that the validity of the marriage is approved Misyar the great Shia scholars.

#### *A review of the terms of Ayatollah Makarem Shirazi:*

He looked for a rundown on Misyar marriage, bringing with it the usual expressions Shi argued that his reasoning is incorporated into the discussion and explained the pros and cons of each of them different. Proponent of the evidence, he argued that if the first two forms: moral compromises made women's rights explained to them have stated that skip moral rights as accurate as we actually see her as a cross around together and the second is the possible compromises made by the women of their rights in either the text of the contract in writing.

A) As Verb condition: if it is the case that the man says: I will marriage with you and wife says: I do not claim certain rights from you and not demanding, it is a verb condition and forbidden.

B) As condition resulting: in this particular man said I would marry you if you do not you do right. They were critical in this regard and stated that, is it right to abortion? In other words, It is significant that the passage of the woman, whether it be the abandonment of the man?

After some explanations, stated that this is a form of abortion rights and doubt and finally says that it is better not to mention the condition of the contract and if you mention it, it is better to act condition. Sunni scholars about whether it is inherited, the result of an act or condition, they are silent about it. But Ayatollah Makarem Shirazi has paid the fine analysis, as summarized on the basis that: they believe that the difference between the current condition and results and he accepts it as a verb condition and contrary to much of the jurists who says: Inheritance of the commandments of God and not a right so it can not be dismantled or later. But he says the wife inherits Misyar in marriage so that marriage is permanent and through him the right to give it to others and if it was not illegal, it seems correct that view is correct Ayatollah Makarem Shirazi.

*Reasons for opposition:*

In this regard, Ayatollah Makarem Shirazi also dealt with the evidence he is the opposition and has rejected the opposition's ideas of beauty one of the reasons for religious purposes are not fulfilled, the oppression of women, as opposed to the divine book, contrary to the nature of marriage, the break of the female characters, giving concubine marriage. Opponents have bet on the first goal, such as the birth of love and mercy, inertia, (peacefully) and because they believe marriage to be null and void and unlawful Misyar but Ayatollah Makarem Shirazi says: There are a lot of married women who are going through a series of rights and in some cases it can be seen that a couple prevent pregnancy after marriage should be annulled at all. The reason for this is because there is some purpose in marriage is void Misyar and the oppression of women and against Ayatollah book says, it makes when a woman needs a man has seen his wife and his need and he does injustice to women, it is invalid alimony is like saying that says since this is not a marriage alimony, so it is opposite of "Ghavamon" and it is vain and he says in reply: this is not due to divine wisdom that lead to corruption, he said: they have forgotten the law of another and it is an abuse of the law is no reason to invalidate any other reasons. If a poor man to marry a wealthy woman and support women to take home, whether it is opposed to "Ghavamon" and cancel? [5].

The other reason is that the opposition believes it is against the nature of marriage and say the secret marriage void as for the woman who is a medium or for sexual exploitation this is because of the nullity of marriage, in response to these two reasons, the answer elegance and says that he will not declare the causes component for example, where there is a father and two witnesses, Is not this a secret? Although it is not a secret marriage Misyar except in some cases by mutual agreement. Do women are infected with sin and the act of exploitation or sharia? And in answer to the latter, since it is similar to a concubine opponents have said, it is forbidden, he says at this time and in accordance with the requirements of time and place, it is called a marriage Misyar inwardly so that it looks like a form of temporary marriage is akin to permanent considering the pros and evidence of the validity of the marriage opponents in the minority in this regard, we must say that marriage is known that the Prophet solvent and for some reason it was forbidden by the second Caliph (the Sunnis), so maybe it was a special reverence for his time if we are forbidden to know, but we have to say this is not true of the benefits of marriage, so it is like a concubine and say that as the concubine is Misyar solvent after the solvent and therefore can not be a good reason (Aghaee, Hanieh).

*An overview of the Sunni view about Misyar marriage:*

In societies where marriage is not accepted, a vacuum is felt by the absence of its and it seems, conjugal marriage recently became popular in the area of the Persian Gulf, which originated Misyar it is commonly accepted that the vacuum caused by the absence of marriage and non-marriage marriage Failing permanently.

*A review of the proponent's view on Sunni Misyar:*

In this case, after investigation, those who know Misyar admit it; we were divided into three groups as follows:

A: It's good to know there are differences in the terms of the contract, Misyar marriage. The group accepts the terms of the contract in full and some only accepting the marriage but they do not accept the terms of the contract as a condition of hire, maintenance and Mabit and they know cancel these terms and wife entitled to claim they know [1].

B: This group believes that the President is the duty of man and the maintenance man should be able to overcome the difficulties of life. The group's mandate is Abahh with disdain as doctor Qarzavi writes: I am not of extension agents in Misyar marriage and I do not read a sermon that it is a contract for Misyar marriage. This marriage is permissible and with disdain, that it is not so desirable solvent and it is feared that seeking a marriage, there is damage and losses.

C: It is a more extreme position. Although all say that this is a true marriage and abortion rights by women and they know just say that he is right (Aghaee, Hanieh). Zoheyli professor about Misyar marriage says this marriage is not religiously desirable in it; for legal purposes, the marriage can not be implemented in full, the rest breath, nobles and descendants of the people respect for and protection of the family holy mosque preacher knows that marriage is legitimate, but he says it is a source of peace and quiet [3]. Sheikh Abdullah of Saudi scholars and judges were once a member of the Board agrees with this view is correct, but the abomination that Misyar marriage.

*An overview of the main reasons that Misyar fans to cite:**Proponents of this theory have cited the following reasons:*

1. It has rules and conditions of marriage because it is the right offer and acceptance, there's a famous marriage of the parties consent, guardianship, testimony, adequacy, and seal the agreement. Legal barriers to the validity of the marriage should be annulled (not many women, etc). After achieving the parties, all rights accrued during the marriage proved to be inherited for generations, some, divorce, property, alimony, and other rights and obligations, couples agree that the wife is not only right to Mabit or swear, and the wife's husband has come when every wish [1]. Zoheyli writes principle of legal contracts, including marriage, it is Abahh, after the

contract is the pillar and legal terms, it is proper and permissible as long as they do not lead to unlawful [1]. This is the main reason for the believers in the Misyar marriage Abahh and legitimacy.

2. In tradition came that the powder was one of the wives of the Prophet (PBUH), he gave the day to Aisha. It is argued that forgiveness means to share Aisha powder and acceptance by the Prophet, which implies that wife can not overthrow the lawyer has the right such as alimony and Mabit.

3. There is great interest in this type of marriage. The marriage responds natural instinct and prevents it from prostitution in some cases, women with children and without a doubt it would reduce the number of women without husbands Varshosaz, 2014).

4. Since there is a similar type of marriage ceremony in jurisprudence such as daily and nightly marriage, Misyar marriage is so true [1].

#### *Critical review of the license Misyar reasons:*

With careful study, in this review we will realize one thing and it is biased against people who are as critical as temporary marriage and they make their own viewpoint on the provisions and conditions of the contract referred to this group say that they do not meet the conditions of marriage and deny basic rights to reasons such as alimony, Mabit, and by men of the house and other things and in powder hadith says: This is no legitimate reason Misyar it was Mabit property belonging to the powder, and he gave it to powder and construction of the main flaws in the marriage and in the end they say: daily and nightly marriage is of intense conflict in the Sunni scholars [1].

#### *An overview of the positions of the Sunni opposition Misyar:*

The opposition can be expressed in two positions so that the position was first placed on respect and a second position overall and made it unlawful to stop and since no clear evidence against them and he said that it needs to be investigated further.

#### *The reasons for the believers on respect:*

Some scholars were attached to the sanctity of the marriage. Abdul Sharif writes Misyar marriage is a new innovation that have created it cowardly people and those who want to be relieved of the responsibilities of the family and they satisfy the sexual needs through marriage is permissible under Sharia Misyar marriage so although it is a legal contract [1]. Citing the believers in respect of the following reasons:

1. Misyar conclusion is consistent with the purposes of marriage is legal. The purpose of marriage in Islam marriage is not only to meet the sexual needs Sunnah of the Prophet (PBUH) and the meaning and purpose of the legislation is for the personal, social and religious such as love and mercy, peace and quiet, keeping the human kind, the obligation to fully respect the rights and duties of the spouses, but Misyar marriage not fulfilled any of these destinations [1].

2. The method of marriage in Islam is opposed to the marriage law and it has been customary among Muslims and Muslims are unfamiliar with this marriage.

3. The provisions of this marriage are opposed by denying and contracts (such as alimony and cannibalized undertaking Mabit) the contract is void. Wife goes right to alimony and Mabit but will change his mind in many cases especially after understanding the mysteries of marriage and religious marriage should be aware of the legal and customary rights.

4. Such a marriage would be a way of entry for corruption and corruption it is simple because the seal and even assumes the responsibilities of the family. It would be easy for couples to marry and divorce. The marriage may be present but hidden. All this makes up Misyar marriage a toy in the hands of opportunists.

5. If a married woman with children in the low relationship with her husband away from the affected education and ethics of the child.

#### *Believers on stop:*

Some scholars have to stop in order to marry because the sentence is not clear and it is necessary for them to reflect more. Umar Ibn al-Saud Aleyd School of Imam Muhammad bin Saud in society, he has mentioned some of the reasons for the believers in the name and license number of scholars who have been allowed to stay after Misyar marriage mentioned drawbacks and negative effects, in the end; he wants to be careful and detailed study of this issue. Because this is a marriage of two aspects: sometimes good and sometimes bad [3]. Ehsan Ben Ayesh writes halts some scholars have licenses that some people indulge in this marriage, and they have a deviation and it is misused by some weak people and institutions have been established to determine the price for this type of marriage is no doubt that this situation leads to uncertainty in the licensing Misyar marriage since the marriage has negative effects, it implies that there is corruption in the lead in this work [4].

#### *One criticism of the believers in respect of evidence and stopping Misyar:*

As the study was also observed in sentences and sentences from the great scholars of the Shia and Sunni, we can say that this is completely legal marriage and abortion rights, the couple does no harm to its religious and its purpose and denying and not the essence of marriage and Mabit charity so that they lead to the invalidation of the residual beneficiary. Those who believe to this case that it can be attached to prostitution,

they have gone the way to Western and also they are pro-freedom unfettered sex because there are witnesses who sign a contract and all basic element in its observance. How it can lead to prostitution? They have also gone the way of children born of the marriage could be because one of the marry someone from one city to another, and this marriage is a legal solution for everyone. Nine businessmen and students and peoples like Omar Ibn Soad Al-Saeed and Ehsan Ibn Ayesh in fact are opponents for all conditions, pillars and orders were clear and everyone wants to read will find comfort in it [3].

#### *Conclusion:*

We must say ordinary, after careful investigation found that Misyar marriage and temporary marriage is quite different but with some careful reflection and we find that among Sunnis, according to the permanent civil marriage, religious marriage, such as Lille and meridian and the establishment of conjugal like Misyar with these conditions, it is indeed a lack of a contract as a temporary marriage. Due to the nature of the two types of marriage Misyar realize that marriage is a kind of permanent marriage, but the result of a temporary marriage so that his wife is going to waiver of a series of rights such as the right to alimony, by and with the agreement of the parties and whenever he wants to speak to him, and each can live independently at home dad and the establishment of new divorce usually given to women of the new generation, whenever he could divorce her and in substitution for a divorce lawyer. So we see that the two are quite different in terms of the nature and structure of marriage. The Sunnis feel the need of a temporary marriage (concubine) has led to the establishment of the marriage Misyar although they are quite different from the structure of the provisions that are exchanged during operation, it can be seen that such temporary marriage if a baby is not a requirement of inheritance, property, alimony, sort and etc although there is disagreement among scholars of Sunni and Shiite provisions as these conditions must be provided if the act or result. However, temporary marriage with its own structure and due to a series of rulings that have been offered by God to the people at the time of the Prophet (PBUH) to facilitate and satisfy the sexual instinct legal marriage for women and for men and avoid falling into error and sin and corruption spread among the community and it has been approved by all the saints (AS). According to the definition, nature and structure of this kind of marriage you realize that this type of marriage is merely to satisfy the sexual instinct through legal, having established this type of marriage and marriage at this point in time in the past not only it is an injustice to women shrinkage and degradation of women, but if we look at it from the perspective of men and women drawn to sin, it will lead to temporal and eternal happiness for men and women working properly. In the words of Professor Morteza Motahari, there is a substantial difference in permanent and temporary marriage and that is the freedom of marriage, a woman and a man away from the shackle of procedural and legal so that they can live with the agreement that they will meet any of course, such a marriage is legal, any couple who wants to can prevent a child from being if you ever get married, it is the opposite.

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