

An Examination of the Practice of *Istibdāl* (Wife Retirement) in Islām and Its Implications on the Contemporary Nigerian Muslims

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ABSTRACT

Marriage, as an institution since the existence of man, is a source of procreation hence, celibacy is not accepted just as unlimited polygyny is not allowed. However, this is contrary to the desire of man who wants more of it. To satisfy his desire in doing this, the concept of *al-Istibdāl* has been misconceived and misinterpreted to have legalized the practice of multiple wives among the Muslims in the Contemporary Society. It is against this backdrop that this paper aimed at examining this concept as contained in Qur'ān chapter 4:20 with a view to investigating into the implication of this practice on the contemporary Muslims. Historical and exegetical methods of research had been adopted while phenomenological method was used in discussing the implications of the practice. The paper had revealed that some contemporary Muslims are hiding under this concept to satisfy their sexual desire with more than four wives. It had also revealed that the practice of *Istibdāl* has scattered families and planted hatred in the minds of the children of the affected wife(s). The paper, therefore, concluded that Q4:20 is not ambiguous to the point of hiding under it for the practice of multiple wives or to make the women suffer. It is therefore recommended that there should be awareness among the masses in form of lectures in Mosques and Islamic gatherings on the negative implications of the practice of *Istibdāl* in the Contemporary Society.

Keywords: Istibdal, Wife Retirement Nigerian Muslim

INTRODUCTION

It is an undisputable fact that women were maltreated by their male counterparts before the advent of Islam.¹ This indeed was not only in the Arabian Peninsula but also in other empires and regions like Babylon, Roman, China and others as they were counted as weaker beings.² Hence, they abused and misused the talented women of their time. By this, women were buried alive, married and divorced anyhow as they were inherited along with other property of the deceased.³ They were married without limitation and in conditionally in the Arabian Peninsula by men just as many men could enter unto a woman one after the other for sexual relation. This is in line with the submission of A. Rahim who says:

*Plurality of wives and husbands was the order of the day. Adultery was common among the pre-Islamic Arabs. Step sons could marry their step-mothers and even the brothers sometimes married their own sisters.*⁴

In another submission as contained in the hadith of Aishah, that a group less than ten men would assemble and enter upon a woman and all will have sexual relation with her.⁵ However, with the advent of Islam two legal types of marriage have been approved. They are monogamy and polygamy system of marriage. This can be supported with Q4:3 where Allāh says:

فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلثَ وَرُبْعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً
أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدَّتْكُمْ أَلَّا تَعُولُوا ﴿٤﴾

“And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slave) that your right hands possess. That is nearer to prevent you from doing injustice.

From the above verse it is obviously that a Muslim man is allowed to have not more than four wives if he is capable of practicing polygamy forms of marriage. But in contrary to the above Qur’ānic quotation Muslim men in Nigeria are marrying more than the legal figures of wives has provided in the Qur’ān and *Sunnah* just to satisfy their desires without any proof while some others are hiding under the verse of *al-Istibdāl* in Q4:20 which says:

﴿وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَعَاتَيْتُمْ إِحْدَهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْءًا ۚ أَتَأْخُذُونَهُ بِهَيْبَتِنَا وَإِنَّمَا مُمِيتًا﴾

And if you wish to have (one) wife in place of another and you have given (Q4:20)

¹ M.Z. Khan, *Woman in Islam*, (Islam International Publications Limited, U.K., 2008), 2.

² G. Adnan, *Women and the Glorious Qur’ān: An Analytical Study of Women-Related Verses of Sūrah An-Nisa*, (n.p: Unuversitat sdrucke Gottinge, , 2004), 7.

³ H. °Abdal °Afī, *The Family Structure in Islam*, (Lagos, Islam Publication Bureau, 1982), 9.

⁴ A. Rahim, *Islamic History* (Lagos: Islamic Publications Bareau, 2001), 6.

⁵ M.M. Khan, *The Translation of the Meaning of Sahih Al-Bukhari*; 7 (Madinah al-Munawarah, 1982, n.p), 42, hadith no. 58, chapter 36.

This attitude has become a way of molesting the women folk just as the practice of the Jahiliyah period when women are using as object of sex not wives. This is an indication that Nigeria society is about to witness the repetition of the ignorant practice all in the name of the concept of al-Istibdāl. It is against this backdrop that this paper is examining the concept of Istibdāl in relations to the practices of Waare that is being practiced by some Muslims Men in Nigeria most especially, Hausa and Yoruba Muslims. This is revealed because both are the major Muslims in the country hence, it will assist in exposing the implication of Istibdāl practices in society.

CONCEPTUAL DEFINITION OF AL-ISTIBDĀL

The word *Istibdāl* is an Arabic word from the verbal root of *badala* (بدل) which means to exchange, to substitute, to replace⁶ as well as to make changes on something. Thus, the word *Istibdāl* (إستبدال) according to the rule in Arabic morphology has an increase in its component letter which makes it to have distinct connotation of asking, or taking or using for oneself the meaning of the root verb which is *badala*.⁷ Therefore, there is always a nexus between a word and its root, hence, *Istibdāl* on the morphological scale of *Istif'aal* (إستفعال) which means “seeking” for an action, would simply imply seeking to replace one thing with another or to substitute or to swap. Therefore, in connection with marriage, *Istibdāl* connote replacing a woman with another woman which may not necessarily be the exhaustion of the maximum of four women.⁸ According to Imam Taju-Din Hanifa the word *Istibdāl* means:

“وضع الشيء مكان الشيء”

put something in place of another thing⁹

Technically, the word *Istibdāl* is used in Islamic Law (*Sharī'ah*) in various way. The one to be discusses in this paper is different from the one discussed in the field of Islamic Law of *Waqf* (endowment) which also means exchange of something or properties with another one else.¹⁰ *Al-Istibdāl* exegetically means according to Az-Zamakhshari in *Al-Kashshāf* means:

وكان الرجل إذا طمحت عينه إلى استطراف امرأة؟ بهت التي تحته ورمها

بفاحشة حتى يلجئها إلى الافتداء منه بما أعطاها ليصرفه إلى تزوج غيرها

It is a period when the eyes of husband has move up from his wife and he refuse to observe any beauty as regards his wife and accuse her of illicit conduct (e.g you can't cook well. You are not neat, why are you late from the office or shop e.t.c). So, he will be looking for another woman, then the first one is

⁶ M.M. Shareef, K. Khaqan, & A. Abdulraheem, *A Concise Dictionary of the Qur'an* (India, understand Qur'an Academy Hyderabad, n.d), 10.

⁷ D. Cowon, *Modern Literary Arabic*, Reprinted Edition (Lagos, Islamic Publication Bureau, 1983), 169.

⁸ Research and Studies Center, *The Bilingual Dictionary: Arabic-English*, 4th Edition (Lebanon: Dar Al-Kotob Al-Ilmiyyah, 2011), 45.

⁹ Mahammud bn Yusuf Al-Shahayur Bi'abi Ahyān Al-Andalusī, *Tafsir-l-Bahri'l – Muhit*, 3, (Egypt, Darul-Fakir, 1978), 205.

¹⁰ Jasni Bin Sulong, *Permissibility of Istibdāl in Islamic Law and the Practice in Malaysia*, (Malaysia, Universiti Sains Malaysia, 2013), 1

no more good to him again and he will be looking for substitution to marry another.¹¹

According to Ibn Kathīr, the verse connotes:

أى إذا اراد احدكم أن يفارق امرأة ويستبدل مكانها غيرها

That is, should any of you intends to disengage or separate a wife and seek to replaced her by another one.¹²

In another submission, the word *Istibdāl* (استدل) connotes as contained in the Qur'an

وإن أردتم تزوج امرأة ترغبون فيها بدل امرأة تنفرون عنها بأن أردتم أن تطلقوها

And if you aimed to marry another wife that you have interest upon that you want to use to replace the one you have married before because of hatred and have interest in divorce the previously married one.¹³

In the opinion of Al-Qāsimī the word *Istibdāl* is explained according to Q4:20 as follows:

"وإن أردتم استبدال زوج" أى تزوج امرأة ترغبون فيها, مكان زوج, ترغبون عنها بان تطلقوها.

If you desire to marry another woman (wife) in place of a previously married wife that you desire to send out (divorce).¹⁴

It can be deduced from the above definitions that *Al-Istibdāl* means replacement, substitution, retirement, separation, or divorce of a previously married woman because of hatred or misunderstanding and to marry another one in her place as a new wife where by the senior one will no more legally be part of the family. However, the modern interpretation of *Istibdāl* in Nigeria is different from the connotation of the Mufassirun. It has been observed that some Nigerian Muslims are marrying more than the legal and approved number of four (4) wives in Islam. This attitude is terminologically known as *Wahare* among the Northern Muslims in Nigeria. This act perhaps, may be due to ignorance of the *Shari'ah* or the negligence of *Shari'ah* based on their whims and caprices.

¹¹ Abi – I- Qasim Mahammad bn ‘Umar Al-Zamahsharī, *Tafsir-l-Kashaf,1* (Beyrouth: Dar- Ehia Al-Tourath Al-Arabi , 2001), 522.

¹² Shaykh Safiur-Rahman Al-Mubakapuri *Tafsir Ibn Kathir*, 2, (Riyadh: Darru Salam, 2000), 405.

¹³ Imam Hussein Ali bn Hammad, *Marā’-labīd Tafsīr Nawawī*, 1 (n.p., n.p., 1960), 145.

¹⁴ Muhammad Jamal-Din-Al-Qāsimī, *Tafsīr Al-Qāsimī Musamma Mahasin al-Ta’wil*, 5 (Beirut: Dar al-Kutub al-‘ilmiyah, 2003) 21.

Linguistically, the word *Wahare* is an Hausa language which means female slave.¹⁵ It is synonymous to the word *Kunyan* equivalent to "أَمَةٌ" in Arabic term.¹⁶ According to Bello, the term is technically described from two perspectives as follows:

1. *Wahare* is describes as a process whereby a Muslim husband with four wives bargain with any of his wives on retirement as wife to allow him marrying another one.¹⁷ Thus, the retired wife continued to live under his custody and enjoy his provision; they will only discontinue all forms of sexual relationships. In an interview conducted with Mallam Sa'adullāhi Muhammad Bashir it has been mentioned that some Muslims involve in this as an opportunity of have sexual relation with woman after they might have been retired from marriage,¹⁸ despite the fact that they have no right to inherit one another nonetheless of sexual relation. This act has absolutely made the men to exceed the boundaries of four (4) legal wives under the Islamic Law (*sharī'ah*).¹⁹
2. The second perspective views *Wahare* is applicable to marriage after the fourth wife where the only first four wives are considered legitimate. In this case, there would be no *Aqidun Nikāh* (marriage contract) on those wives under *Wahare* and such wives and their children would have no share from the estate of the husband in case of death.²⁰ As a result, husband is expected to have made excess provisions for them and their children, before his death, as compensation in advance of what they would suffer from inheritance. Moreso, 'Iddatu 'l-Wafāt (waiting period after the death of husband) is not applicable to those wives as they would stay only for forty days while the first four wait for four months and ten days according to Qur'an prescription in Q2: 234.²¹

In the submission of Mallam AbdulRasaq Ibrionke, the misconception about *Istibdāl* is only common and applicable to Nigerian Muslims alone, as the practice cannot be found in the Arabian countries. He upholds that, it can be done when a woman or wife is having critical conditions such as health problem or lack of children among others. The husband can seek for replacement of her with another but she will remain under his roof if he has many apartment or he can bear her rent house in order to protect her dignities and fulfill some parts of the rights of husband upon her e.g accommodation, feeding, protection and many others base on his understanding of the verse and avoid any forms of sexual relation with her. This will perfectly be done if the woman is not ready to remarry and she does not want to be roaming about and be harassed by irresponsible men.²²

¹⁵ K.I. Bello, "Concept and Practice of Wahare among contemporary Muslims in Nigeria: are there correlations with Qur'an 4:20," (unpublished write up), Department of Religions, History and Heritage Studies, Kwara State University, P.M.B 1530, Malete, Kwara State (2019), 4.

¹⁶ Bello, "Concept and Practice of Wahare among contemporary Muslims in Nigeria: Are there correlations with Qur'an 4:20"...20.

¹⁷ Bello, "Concept and Practice of Wahare among contemporary Muslims in Nigeria: Are there correlations with Qur'an 4:20"...21.

¹⁸ An Oral interview conducted with Imam Sa'adullah Muhammad Bashir, aged 43 on 30-01-2019.

¹⁹ An Oral interview conducted with Imam Sa'adullah Muhammad Bashir, aged 43 on 30-01-2019.

²⁰ Bello, "Concept and Practice of Wahare among contemporary Muslims in Nigeria: Are there correlations with Qur'an 4:20"...21.

²¹ Bello, "Concept and Practice of Wahare among contemporary Muslims in Nigeria: Are there correlations with Qur'an 4:20"...24.

²² An Oral Interview conducted with the Chief Librarian of Shari'ah Court of Appeal Ilorin, Mallam AbdulRasaq Ibrionke aged 54 on 30-12-2019.

From the above submission, it is obvious that the concept of *Istibdāl* as contained in Qur'an 4:20 has been misinterpreted by some Nigeria Muslims, hence, gives room for their practicing of another concept (*Wahare*) that is different from Qur'ānic verse.

Islamic Position on the Concept of *Istibdāl*

According to the Islamic Jurists and *Mufasssirūn Al-Istibdāl* is supported by the Qur'an, *Sunnah* of the Prophet and the consensus of the Islamic scholars among the companions, *Tabi'ūn*, and their successors. With regards to the Qur'ānic proof, this is contained in Q4:20 though with various interpretations among the *Mufasssirūn*. The verse reads:

﴿وَإِنْ أَرَدْتُمْ أُسْتَبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَعَآتَيْتُمْ إِحْدَهُنَّ قِنْطَارًا
فَلَا تَأْخُذُوا مِنْهُ شَيْءًا أَتَأْخُذُونَهُ بِهْتِنًا وَإِنَّمَا مُبِينًا﴾

And if you wish to have (one) wife in place of another and you have given one of them a heap of gold, then take not from it anything; would you take it by slandering (her) and (doing her) manifest wrong? And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant?

The above verse is addressing the practice of *Istibdāl* in which shows that it is permissible by the Qur'an. It should be noted that the practice is only directed towards the husband as a woman (wife) can't practice *Istibdāl* base on the above verses. However, if the husband wants to do so there must be a valid reason before engaging in it. Thus, the above verse is the only verse in the Qur'ān supporting this practice of replacement.

In the case of *Sunnah*, there are some *ahādīth* supporting the practice of *Al-Istibdāl* as stated in the above verse, among which are:

Anas, a companion of the noble Prophet Muhammed (ﷺ) related that once Abu Ayyub and Abu Talha wanted to divorce their wives (without valid reason) and asked the Noble Prophet about it. He counseled them not to do so, characterizing their act as an act of injustice. There upon, they abandoned their intention of divorcing their wives and retained them. This does not mean that a husband cannot divorce his wife without obtaining the permission of the authorities; he can do so, if he desire; but he will certainly be accountable before God if he does so without valid reason. Elsewhere the noble prophet is reported to have said "surely if the things sanctioned by the law of Islam the most hateful in the sight of God is divorce."²³

The second is the Hadith of Sawdah bint Dham'ah, the wife of the Prophet who was afraid of being divorced by the Prophet due to her old age. Imam Tirimidhi recorded the Hadith thus:

²³ Ibn Mājah, Muhammad ibn Yazīd, Abu Ṭāhir Zubayr 'Alī Za'ī, Nasiruddin Khattab, and Abu Khalil, *English Translation of Sunan Ibn Mājah* (Riyadh: Darussalam, 2007) 1, 650, *Ḥadīth* no. 2018.

خشيت سودة أن يطلقها رسول الله صلى الله عليه وسلم فقالت: لا تطلقني وأمسكني واجعل يومي منك لعا ئشة, ففعل فنزلت: "فلا جناح عليهما أن يصلحا بينهما صلحا والصلح خير" فما اصطلحا عليه من شيء فهو جائز

Sawda feared that the Prophet may divorce her and said "do not divorce me but retain me and give my night to Aisha", the Prophet concurred and the verse reveals (then there is no sin upon them that they make terms of peace but between themselves and reconcile on is allowed).²⁴

Based on the above traditions, different scholars have interpreted the verse in different ways, though all agreed that *Al-Istibdāl* means *Aṭ-Ṭalāq* (divorce) either directly or indirectly according to their expressions. On this verse it is said in *Tafsīr Jalālayn* that it connotes:

أى أخذها بدلها بأن طلقتموها

That is to take the latter to replace the former by divorcing her²⁵

According to Ibn Kathīr, the verse connotes:

أى إذا اراد احدكم أن يفارق امرأة ويستبدل مكانها غيرها

That is, should any of you intends to disengage or separate a wife and seek to replaced her by another one²⁶

In another opinion, Imam Tabari says:

وإن أردتم, أيها المؤمنون, نكاح امرأة مكات امرأة لكم تطلقونها وقد أعطيتم التي تريدون طلاقها من المهر

If you believers aimed at marrying a wife to replace another one, you are to divorce her and you should give the one to be divorced a heap of gold as Mahr²⁷

According to As-Sa^cdī this verse of *Istibdāl* connotes:

تطبيق زوجة وتزويج أخرى

Divorcing a wife and marrying another one.²⁸

Shaykh Ismail Haqī in his own contributions and commentary of the verse, he says:

²⁴ Ibn Mājah, Muhammad ibn Yazīd, Abu Ṭāhir Zubayr ‘Alī Za’ī, Nasiruddin Khattab, and Abu Khalil, *English Translation of Sunan Ibn Mājah*, 2, 6, *Ḥadīth* no. 1851.

²⁵ Jalal-Din Muhammad bn Hammad Al-Mahali & Jalal-Din AbdulRahamn bn Abibakir Al-Sayutī, *Tafsir Al-Qur’an Al-‘Azim*, (Bayrouth, Daru-l-Fakir, 2014), 66.

²⁶ Shaykh Safiur-Rahman Al-Mubakapuri *Tafsir Ibn Kathir*, 2, (Riyadh: Daru Salam, 2000), 405.

²⁷ M.J. At-Tabari, *Jami ‘U‘l-bayan Fita ‘wili ‘l-Qur’an* (Cairo: Mussasatu’r-Risalah, 2000), 332.

²⁸ A.N. As-Sa^cdī, *Tafsiru‘l-Karimi‘r Rahman fi Tafsīr Kalami‘l-Mamman*, (Cairo: Mu’ssasatu’r-Risalah, 2000), 312.

وان أردتم استبدال زوج " أي تزوج امرأة ترغبون فيها " مكان زوج " ترغبون عنها بأن تطلقوها.

If you desired to marry another woman (wife) in place of a previously married wife that you desire to send out through *Aṭ-Ṭalaq* (divorce).²⁹

Based on the above comments of the *Mufasssirūn* on the verse of *Istibdāl*, it can be said that they all agreed on the fact that *Al-Istibdāl* means *Aṭ-Ṭalaq* (divorce) and not engaging in marrying the women without limitation or housing them for sexual purposes.

With regard to the consensus of the scholars, many proofs have been provided by the scholars of Islam on the meaning and legality of *Istibdāl*. Ibn Abbas commented on the verse of *Istibdāl*, thus:

عن ابن عباس في قوله " وإن اردتم إستبدال زوج " الاية قال إن كرهت امرأتك واعجبك غيرها فطلقت هذه وتزوجت تلك فأعط هذه مهر وإن كان قنطار

If you fear of hatred from your wife and you intend to marry another woman then, divorce the senior one (first) then marry another one in place of her and give the new woman (wife) her *Sādāqa* even if it is *Qintār* (huge money).³⁰

In another report Ibn Abbas further his commentary on the Ayah (Q4: 21), thus:

عن ابن عباس في قوله " وأخذن منكم ميثاقا غليظا " قال: الغليظ : امسك بمعروف أو تسريح باحسان

Ibn Abbās said on the statement of Allah that the word " *Al-Ghaliz* " means hold them firmly or you divorce them in good manner³¹

Historical Practice of *Istibdāl* before and after Islam

Before Islam there are various cases of marital intolerance and marital infidelity in the world which did not exceed the Arab provinces during the period of ignorance. Some of the issue about their common practice has been earlier mentioned in this paper against the female gender in the introductory part of this paper. However, during the life time of the Prophet (ﷺ) there were some cases of companions who wished to act in the same vein of the ignorance period to divorce their wives at their will or at their own convenient time without any justifiable offence. It could be recalled that the cases of Abu Ayyub and Abu Talha has

²⁹ Shaykh Ismail Haqī Al-Burusuwī, *Tanwiru Al- 'Adhahani Min Tafsiṣ Ruhi-l-Bayani*, (Cairo: Daru Sabuni, 1988) 226.

³⁰ Muhammad b. 'Aliyu bn Muhammad Al-Saukanī, *Fatihu Al-Qadir*, (Bayrouth: Daru-l-Fakir, 1999) 666.

³¹ Muhammd bn 'Aliyu bn Muhammad Al-Saukanī, *Fatihu Al-Qadir*..... 667.

earlier mentioned in this paper who wanted to divorce their wives without any reason then, the Prophet (ﷺ) admonished them hence, they took back their wives.

On this Abūl-Āla Al-Mawdūdī commented on both the Qur’ānic verse and *Ḥadīth* on *Istibdāl* thus:

This means that if the wife is either not beautiful or has some short coming because of which she does not seem attractive enough to her husband, the latter should not suddenly decide, in a fit of rage and disgust to part with her. Rather he should act with patience and forbearance. It often happens that a woman lack physical attraction but has other qualities which are of much greater value for the success of married life. Hence if such a woman finds the opportunity to express her qualities, the same husband who initially felt revulsion towards her becomes captivated by her attractive conduct and character. Sometimes in the early stages of married life a husband dislikes certain things in his wife, and this initial dislike may even grow to revulsion, were a man to be patient and allow all the potentialities of the woman to be realized, it would become evident to him that her merits outweighed her weaknesses. Hence, a man’s haste in taking the decision to rupture the matrimonial bond is not praise worthy. Repudiation of marriage should be man’s last resort, a resort towards which he should turn only in unavoidable circumstances. The prophet (ﷺ) has said: ‘for God, divorce is the most reprehensible of all lawful things. In another tradition the Prophet (ﷺ) said: ‘Marry and do not go about divorcing’ for God does not like men and women who keep on changing partners merely for a change of taste.³²

It could be deduced from the above discussion that divorce should not be a fast resolution for marital issues as it has become the practice of the *Jahiliyah* period to divorce a woman or wife just because of a flimsy mistake.

Present Practice of *Istibdāl* in Nigeria: Yoruba and Hausa

The practice of *Waare* in Nigeria has been linked to the Qur’ānic verse of *Istibdāl* Q4:20, even though this connotation and practice of the concept are not the same. And Qur’ānic evidence is not restricted to man with four wives alone.

The linguistic pronunciation of *Wahare* is *Waare* without ‘h’ as it takes an elongation of ‘aa’.³³ Its means, according to the existing practice among Nigerians, to seek to divorce from one of the senior wives after a Muslim man has already completed the recommended legal figure of four in *Sharī‘ah* because of her old age or any other reasons. This indicates that the man wants to replace her with a young woman, then, he has to take permission from her to collect her contract of marriage for the young woman to stay in her position and to remain lonely.³⁴

The word *Waare* is synonymous to the word *Saki* which means *Ṭalāq*. According to Mallam ʿĪsā who is a Hausa man living in Ilorin. He explained that *Al-Istibdāl* means *at-Talaq* in the northern Nigeria and that both *Ṭalāq* and *Saki* have similar meanings. In the case of *Istibdāl* as it is practice in the North, is *Waare*. He is also of the view that *Ṭalāq* can

³²Muhammad bn ‘Aliyu bn Muhammad Al-Saukanī, *Fatihu Al-Qadir*..... 667.

³³ An oral interview conducted with Mallam ʿĪsā Saliu Awodi, aged 37 at Sobi Road Ilorin on 11-02-2020.

³⁴ S.O. Muhammad, My brief comment during the symposium organized by the Department of Islamic Law, University of Ilorin, The topic: Retirement of Wives, Interrogating The Concept and Practice of *Istibdāl* (Ware) Under the Islamic Law, (Ilorin, Unpublished, 2019),2

be *Istibdāl* but in most cases *al-Istibdāl* cannot be *Ṭalāq*.³⁵ However, a word is called *Kunyan* in Hausa language, can also connote *aṭ-Ṭalāq* as it is sometime connected with *Waare*.

In his own opinion, Mallam ʿĪsā explained that *Kunyan* is a practice that is done by the Hausas when a wife is found guilty of marital infidelity hence, is divorce for that purpose. But in the case of *Waare* it does not revolve around *Fahishah*, rather, it is a practice done when some men intend to marry more than four as legalized by *Sharīʿah*.³⁶

More so, Mallam ʿĪsā added that he had witnessed like two cases of *Waare* in the north, when he was residing there as student. This first case involved Mallam Aminullahi Muhammad who sought divorce from his first wife, Shefiat Garba in Tukun/tawa area, Zoo Road of Kano State in 2012. He was granted the permission by her to do so and he married another young woman in place of Shefiat. With this, the divorce one remain in his custody and benefit parts of marital rights e.g feeding, accommodation and others and forbade her for marrying another man instead.³⁷ But this is against the interpretation of *Mufasssirun* according to the verses of *Istibdāl*, where by the divorced woman has to be free from the bondage of previous husband for other man to marry after she has observed her *Iddah*.³⁸ But as regards the contextual practice of *Waare* the wife remain under the roof of his formal husband without *Iddah*.

The second case was between a man called Zayfullahi Tanko and his first wife in 2014 in the same State, Street, and Road, as above. He also replaced his first wife and married another one in place of her without *Iddah* and remains in his custody.³⁹ In addition, there are two cases in Ilorin Metropolis: where by the first man married nine wives and the second man married five wives, and all of them were living together and benefiting the same marital rights from the same husband.⁴⁰ It is important to state here that these actions and attitudes of some Muslim among the *Yorubas* and Hausas in Nigeria are against the interpretation of *Mufasssirun* on the verse of *Istibdāl* where the woman has to be free from the bondage of the husband who divorced her in order to allow her to remarry to another man.

Thus, the practice of *Waare* has no bases in Islamic law (*Sharīʿah*). It is in line with the practice of the *Jahiliyah* era. It is also in contrary to the polygamous practices which Islam has legalize with a limited number of wives as contained in Q4:3 and as practiced during the life time of Prophet Muhammad (ﷺ), his companions and the generations that follows. It is also important to mention here that this practice of *Waare* is not supported by Q4:3 which some Muslims have used as proof in buttressing multiple practice of marrying more than four. The calculation is not only wrong but also misleading and in contrary to the Qurʿānic verses, statement and approval of the Prophet as well as the practice of companions.

³⁵ An oral interview conducted with Mallam ʿĪsā Saliu Awodi Sobi Road Ilorin on 11-02-2020.

³⁶ An oral interview conducted with Mallam ʿĪsā Saliu Awodi Sobi Road Ilorin on 11-02-2020.

³⁷ An oral interview conducted with Mallam ʿĪsā Saliu Awodi Sobi Road Ilorin on 11-02-2020.

³⁸ Bello, “Concept and Practice of Wahare among contemporary Muslims in Nigeria: Are there correlations with Qur’an 4:20”...21

³⁹ An oral interview conducted with Mallam ʿĪsā Saliu Awodi Sobi Road Ilorin on 11-02-2020.

⁴⁰ An Oral conducted with Mallam AbdulAkeem Olesin, Akerebiata, New Shao Garage Ilorin, on 2nd January 2020.

CAUSES OF *ISTIBDĀL* IN MARITAL LIFE

It is permit to emphasize that the causes of *Istibdāl* among the Nigeria Muslims vary from individual to individual, and family to family. The following are some of the cause of *Al-Istibdāl* in some Muslims families in Nigeria Society:

- a. **Medical Challenges:** Indeed, marriage is an act of worship. However, all the creatures of Allah are created in pairs, which make one part to be looking after the other for the completion of peaceful co-existence in life. Thus, marriage becomes either necessary or compulsory. However, in the case of a sick wife whose sickness is perpetual the husband is permitted if he could not have enough to accommodate for wives to seek *Istibdāl* from his wife to allow him to marry another one in her place. But if he can accommodate more than one then, it is advisable to leave her in apartment as a wife and benefit the marital rights under the Islamic law of marriage and safe her from any forms of mess from other irresponsible men in the society.⁴¹
- b. **Procreation:** The fruits of marriage are many among which is procreation, as Allah want the human race to continue from generation to another. Some Muslim men seek for *Istibdāl* from their wives because of their inability to reproduce. This is common when a man does not have the wherewithal to cater for two women under his roof then, he can seek for divorce from the first wife to marrying another woman seeking for reproduction. However, if he is financially capable to fulfill both the physical and spiritual aspect of marriage, it is advisable to keep the first wife provided she liked to remain with him instead of *Istibdāl*.
- c. **Old Age:** Another reason people practice *Istibdāl* is when a woman has reached the aging period and she does not have any passion for sexual relation while the husband is still agile then, it is allowed for the husband to seek *Istibdāl* from the previously married woman or women in order to entertain another and free them as recommended under the Islamic law (*Sharī'ah*). However, there is need to explain further that *Istibdāl* is not the next option in this case as there is option of polygamy under which it is not possible for all the wives (four) to be old at the same time.
- d. **Hatred:** According to Abu 'Alā Al-Maudūdī who opined in his interpretation of the Ayah 20 of *Sūratu-n-Nisā'* that if a man is firstly married his wife, he will detected some of the unlike characters from her part but as time goes on through correction and endurance he will see some good things from his wife which he was unable to note at early time but if he as rushed to divorce her the good things we not be seen.⁴²
- e. **Lack of Beauty and Attraction:** According to Abu-la Al-Maudūdī; who also opined that, there are some women who lack first attraction in beauty naturally but in some cases they have other quality which Allah (S.W.T) endowed upon them. But if a wife is divorce because of lack of beauty another good thing as a favour upon her will not be seen.⁴³

In conclusion, the above listed points are some of the likely causes of *Istibdāl* in marital life. It should however be noted that the most important thing in marriage is fear of Allah in dealing with one another in order to save marriage from unnecessary dissolutions. It is this fear of Allah that will serve as guide to differentiate this genius reasons from the selfish reasons. The husbands, who are at the advantage in the *Istibdāl* should relate with their wives as Allah says:

⁴¹ An Oral Interview conducted with chief librarian of Sharī'ah Court of Appeal Ilorin, Mallam AbdulRasaq Ibrinke on 30-12-2019.

⁴² Al-Mawdūdī, *Towards understanding the Qur'an....*

⁴³ Al-Mawdūdī, *Towards understanding the Qur'an....*

وعاشروهن بالمعروف

And live with them honourably (Q4:19)

Also, the Prophet has encouraged Men when he said:

من كان يؤمن بالله واليوم الآخر فلا يؤذى جاره واستوصوا بالنساء خيرا
فإنهن خلقن من ضلع وان أعوج شيء في الضلع أعلاه فإن ذهبت تقيمه
كسرته وان تركته لم يزل أعوج. فاستوصوا بالنساء خيرا

Whoever believes in Allah and the last Day should not hurt (trouble) his neighbour. And I command you to take care of the women in a good manner, for they are created from a rib and the most crooked portion of the rib is its upper part; if you try to straighten it, it will break, and if you leave it, it will remain crooked, so I command you to take care of the women in a good manner.⁴⁴

Pre-requisite of *Istibdāl*

Al-Istibdāl, as a concept entrenched in both the Qur'ān and *Sunnah*, has been explained to connote *aṭ-Ṭalāq*. This is an indication that there must be some pre-requisite for the husband to follow. Some of the conditions of *Istibdāl* under Islamic law are as follows:

- a. **There must be Islamic legal contract between a man and a woman:** It is not possible for a Muslim man to assist another Muslim man to divorce his wife as it is not possible to divorce (*Istibdāl*) a woman whom a man has not legally married. Therefore, the contract of marriage should be established before *Istibdāl* can take place.
- b. ***Istibdāl* must be from Husband:** It is unanimously agreed upon by the Mufasssirrūn that a woman cannot practice *Istibdāl* as this will be tantamount to adultery. It is only permissible for man according to Q4:20.
- c. **Mahr is not refundable:** Another major condition for *Istibdāl* is the non-refundable of the bridal price that has been given to the woman on the day of marriage regardless of the quantity or quality of the Mahr. This is categorically mentioned by Allah in Q4:20 which says:

﴿وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَعَاتَيْتُمْ إِحْدَهُنَّ قِنْطَارًا
فَلَا تَأْخُذُوا مِنْهُ شَيْءًا أَتَأْخُذُونَهُ بِهْتَانًا وَإِنَّمَا مُبِينًا﴾

But if you intend to replace a wife by another and you have given one of the Qintār (of gold, i.e. great amount as Mahr), take not the least and of it back; would you take it wrongfully without a right and (with) a manifest sin? And how could you take it (back) while

⁴⁴ M.M. Khan, *The Translation of the Meaning of Sahih Al-Bukhari*, 7 (Madinah al-Munawarah, n.p, 1982,) 81, hadith no. 114, chapter 81, Bab 80.

you have gone in unto each other, and they take from you a firm and strong convent?

In the *Tafsīr* of al-Qāsimī the word *Qintār* is interpreted thus:

أى مالا كثيرا مهرا "فلا تأخذوا منه شيئا" أى يسيرا فضلا من الكثير

That is (*Qintār*), it is a huge amount of money as Mahr "Nothing should be taken back from it" That is small thing nonetheless huge.⁴⁵

It can be said categorically that all the *Mufasssīrūn* agreed that nothing should not be taken back from the *Qintār* as *Mahr* if the husband has requested for replacement of his wife with another.

- d. **Iddah**: It is established by the Qur'ān that the divorce woman (wife) should observe *Iddah* for three menstrual periods or in the case of non-menstruating woman three consecutive months should be counted before leaving the roof of her husband for another man. Thus, Allāh says:

﴿يَأْتِيهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا﴾

O Prophet (ﷺ)! When you divorce women, divorce them at their *Iddah* (prescribed periods) and count (accurately) their *Iddah* (periods), and fear Allah your Lord (O Muslims). And turn them not out of their (husband's) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah. And whoever transgresses the set limits of Allāh, then indeed he has wronged himself. You (the one who divorces his wife) know not it may be that Allah will afterward bring some new thing to pass (i.e to return her back to you if that was the first or second divorce).

- e. **Living Together is forbidden**: A woman that is divorce through *Istibdāl* is not allow to live under the custody of the former husband after *Iddah* in any circumstances since all the Qur'ānic exegetes are unanimously agreed that *Al-Istibdāl* means *Aṭ-Ṭalāq* (separation) hence, the woman should be free to marry another Muslim man of her choice. However, this is not in the same vain with the practice of *Waare* in Nigeria whereby, the women will still remain under the roof of the former husbands.

IMPLICATION OF THE NIGERIA PRACTICE OF *ISTIBDĀL* (*WAARE*)

Aṭ-Ṭalāq as a practice, has implications on not only the husband and wife but also the children and the society, nonetheless of *al-Istibdāl* which is a means of separation between husband and wife. There are implications for the practice of *Istibdāl* especially with flimsy excuses of old age or its ways of practice in the contemporary Nigerian society which is

⁴⁵ Muhammad Jamal-Din-Al-Qasimī, *Tafsir Al-Qasimī* Musamma Mahasin al-Ta'wil (Beirut: Dar al-Kutub al-'ilmiyah, 2003), vol. 5, 21

quietly different from that of the Islamic Law. These implications can be categorized into five as follows:

- i Religious Implication
- ii Psychological Implication
- iii Social Implication
- iv Moral Implication
- v Economic Implication

Religion Implications

There are different ways in which the practice of *Waare* is affecting the marriage institution in Islam. Some of these are, marrying the fifth wife, it cause religion politics, as well as religion blackmailing, and among others. One of the religious implications of the Nigeria practice of *Istibdāl* is the transgression of Allah's boundary on polygyny in Islam. The highest number of woman to be married by a Muslim is four according to the Qur'ān, *Sunnah* and consensus of the scholars. So, any woman after the fourth wife is illegal and her children are illegitimate; hence they here no share in the property of the man after his death. This can be supported by the Hadith of the Prophet which read thus:

أن غيلان بن سلمة الثقفي أسلم وتحتة عشرة سوه فقال له النبي صلى الله
عليه وسلم اختر منهن أربعاً

Salim said that his father said that Ghilān bin Salamah Ath-thaqafi had ten wives when he became Muslim, and the Prophet (ﷺ) said to him, "Choose any four of them (and divorce the rest)."⁴⁶

Another religious implication is misrepresentation of Islam as a religion that is maltreating the women by using them as objects of sex and enslaving them or denying them their rights. By this, Islam will be accused of *Jahiliyah* traits among which are unlimited number of woman to be married which is similar to the practice of *Waare* in Nigeria.

Psychological Implication

The act of replacing a woman with another through *Istibdāl* as practiced by some Nigeria Muslims among the *Yorubas* and Hausas is capable of causing psychological problem not only to the woman but also her children. This may lead to different kinds of diseases in the victims such as trauma, hypertension, high blood pressure and diabetes among others.

In the case of trauma, a replaced woman became ashamed of herself and frustrated of life. She may develop no interest in any man and even lose trust not only in herself but also in men generally. This condition may lead to, if not solve on time, mental illness due to loneliness, too much thinking and sleeplessness. Similarly, this attitude will lead to depression which in turn may cause the blood to rise and may eventually lead to sudden death of the victim. Also, how to survive is another thought of a victim of *Istibdāl* (*Waare*) which can make her to be imbalanced psychologically. This will be higher in a victim with children to be catered for alone without any sustainable source of income.⁴⁷

⁴⁶ Ibn Mājah, Muhammad ibn Yazīd, Abu Ṭāhir Zubayr 'Alī Za'ī, Nasiruddin Khattab, and Abu Khalil, *English Translation of Sunan Ibn Mājah*, Vol., 2, 103, *Ḥadīth* no. 1953, Chp. 9, Bab 41.

Social Implication

One of the social Implications is misguiding the people in the society with regard to the number of women to be married and the ways and manners women should be treated in Islam. This is because some people take their Islamic knowledge from the attitude and behaviours of Muslims which may not necessarily depict the real Islam. Similarly, this kind of practice is capable of breaking the bonds of friendship, kinship and Islamic brotherhood as well as dividing a family into pieces. This will be so as the children of victim or her family and friends will develop hatred and grudges against husband. This may lead to family and social crises.

Moral Implication

Islam as a religion teaches good moral in all aspects of life including the marital life of man. The marriage etiquettes revolve around obedience in the part of the wife while spending and good treatment of the wife are what make husband to be superior than the wife in term of duties and responsibility of spouses in a family structure. But immediately the husband introduces *Istibdāl* to his wife without any religious reason except marrying another young wife, the woman will start exhibiting different immoral behaviours towards the husband. This attitude may also cause immoral behaviours on the part of the children towards their father. The husband has created enmities in the family even within the children from his wives, because the children of the victim will not be in good relation with the children of the new wife. Thus, long time enmity has started with the family.

Economic Implication

From the observations and interviews conducted, it was discovered that some families have been experiencing economic setback as a result of the practice of *Istibdāl*. The parenting responsibilities of both parents have become that of the mother alone in most of the families observed. For instance, some of the children are yet to pay their school fees while some have left private schools for public schools. Similarly, the victims (the mother) are alone struggling to sustain the children as well as herself. It was also observed that some children were sick as a result of lack of balance diets which they were used to when their parent were together. Some of the children were taking to hospital but, the mother could not afford the bill.

CONCLUSION

So far, an attempt has been made to explain the Islamic position on the practice of *Istibdāl* in Nigeria society. It has been discussed that *Istibdāl* means divorce according to the interpretation of all the *Mufasssirūn* in line with the Q4:20 and the *aḥādīth* of the Prophet. It has been discussed that the practice of *Istibdāl* among the *Yorubas* and Hausas is different from the explanation of the Islam. The practice among the Muslims especially in the North is known as *Waare*. The implications of this *Waare* practice among the contemporary Muslims have also been discussed to cover the religious, psychological, social, moral, and economic life of not only the woman but also the children and the society.

In light of the above, the paper therefore recommend, that a Muslim man should not marry more than four (4) if he wants to practice polygamous forms of marriage in Islamic institution, thus, if does, the doer should be prosecuted under Islamic law and take to any

available *Sharī'ah* court in his state for punishment in order to curb the practice from the incoming generations. Indeed, the practice of *Waare* need to be curtail before it become spread among the Muslims in the country to safe the society from the wrat of Allah. More so, the present Muslim scholars and jurists needs to make *Ijtihad* on the concept of *Istibdāl* and arrived that, it is also another forms of *Aṭ-ṭalāq* (divorce) like, *Al-Ilā, Liān, As-Sihar* and *Khul'*. The notion that waare is better than *ṭalāq* needs urgent attention and enlightenment from the righteous Islamic scholars to curtail the spread of the practice of *Waare* in contemporary Nigeria society.

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