

THE LEGALITY AND SOCIAL CONSEQUENCES OF *ZIWAJ URFI* IN MODERN MUSLIM SOCIETIES

Manswab Mahsen Abdulrahman *
Abdulhafiz Musa Walusimbi **

ABSTRACT

Ziwaj Urfi is non-traditional forms of marriage that have gained prevalence in modern Muslim societies due to changing social and economic conditions. While these marriages provide alternatives for individuals facing challenges in formal matrimonial arrangements, they also raise concerns about their legal validity and social implications. Islamic jurisprudence offers diverse perspectives on these marriages, leading to debates among scholars and policymakers. Despite their increasing prevalence, Ziwaj Urfi remain contentious in terms of legality, ethical considerations, and societal impact. Critics argue that such marriages undermine the traditional

* Senior Lecturer, Department of Shariah, Faculty of Islamic Studies and Arabic Language, Islamic University in Uganda, P.O. Box 2555, Mbale, Uganda. (Corresponding Author) E-mail: manswab@iuiu.ac.ug.

** Associate Professor, Department of Shariah, Faculty of Islamic Studies and Arabic Language, Islamic University in Uganda, P.O. Box 2555, Mbale, Uganda. E-mail: haafizmusa@gmail.com.

institution of marriage, while proponents contend that they offer flexibility within the framework of Islamic law. However, there is a lack of comprehensive research assessing the legal status of these unions across different jurisdictions and their social consequences on individuals and communities. This study seeks to answer the following question: What is the legal status of Ziwaj Urfi? The objectives of the Study is to examine the legal status of Ziwaj Urfi and social consequences of Ziwaj Urfi this study adopts a qualitative approach, utilizing doctrinal legal analysis of Islamic jurisprudence, reports from various Muslim countries, and interviews with legal experts and affected individuals. The study finds that Ziwaj Urfi is permissible in Islam provided it meets all the essential conditions—namely, the presence of a guardian, witnesses, mutual offer and acceptance, a dowry, and the woman's consent. In such cases, the marriage is considered valid even if it is not officially registered. However, opposing views argue that customary marriages are impermissible in Islam, asserting that the lack of public announcement contradicts fundamental Islamic principles and renders the marriage invalid due to its secrecy.

Keywords: *Ziwaj Urfi, Islamic Marriage, Islamic Jurisprudence, Social Consequences, Legality*

INTRODUCTION

Marriage is a union between a spouse to satisfy their sexual instincts, seek legitimate procreation, and establish a stable life based on love, mercy, and tranquility. This is the legitimate method approved by Almighty Allah (SWT) since the creation of Adam until the Day of Resurrection. Allah (SWT) says:

وَقُلْنَا يَا آدَمُ اسْكُنْ أَنْتَ وَزَوْجُكَ الْجَنَّةَ

“O Adam, dwell, you and your wife, in Paradise.” (Al-Baqarah 2:35)

Another verse from the Qur’an states:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا
إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ
يَتَفَكَّرُونَ

“And among His signs is that He created for you mates from among yourselves that you may find tranquility in them, and He has put love and mercy between your hearts. Indeed, in that are signs for a people who give thought.” (Ar-Rum 30:21)

In his comprehensive definition of marriage, Sheikh Abu Zahra, said: "It is a contract that establishes the cohabitation between a man and a woman, their cooperation, and defines the rights and duties of each."¹ From this, we understand that the objectives of Sharia in lawful marriage are represented in three matters: First, satisfying sexual desire, which results in achieving chastity and modesty; second, achieving lawful procreation, which fulfills the instincts of fatherhood and motherhood, kinship, populating the earth, and worshipping God; and third, establishing a good life based on tranquility, affection, and mercy, which leads to communication, compassion, and cooperation between people, especially relatives. In this way, society is reformed and life becomes upright.

Modern Muslim societies have witnessed the emergence and increasing prevalence of alternative forms of marriage, such as *Ziwaj Urfi*, which challenge conventional marital norms. These

¹ Mohammad Abu Zuhra, *Aḥwāl al-Shakhṣīyah* (Cairo: Dar al-Fikr al-Arabī, 1957), 17.

forms of marriage, often practiced in secrecy or with reduced obligations, have sparked significant legal and social debates. *Ziwaj Urfi* refers to a marriage that fulfills all the legal requirements but is not officially registered, such as in a Sharia court.² A written marriage contract may be executed in the presence of a guardian and witnesses. This practice is common among clerics handling marriage and personal status cases. However, some people use the term customary marriage to describe an informal union between a young man and a young woman. For instance, if a young man says, "Marry yourself to me," and the woman replies, "I marry myself to you," they may write an informal agreement between themselves, a practice observed in some Muslim societies.

This research paper examines the permissibility and impermissibility of contemporary marriages, *Ziwaj Urfi*, and how they are practiced in Muslim societies by clarifying the jurisprudential stance, societal acceptance, and consequences on marital relations. In addition, it evaluates the perceptions of classical and contemporary jurists regarding these types of marriages and their implications for gender justice, family cohesion, and legal frameworks. Through a critical analysis of jurisprudential texts and contemporary issues, this article aims to assess the legal status of *Ziwaj Urfi* within the framework of Islamic law (*Shariah*). It also analyzes the differences among Muslim jurists concerning the recognition, regulation, and enforcement of these marriage practices. The study seeks to answer the following research question: How are *Ziwaj Urfi* legally recognized in modern Muslim societies under Islamic jurisprudence and contemporary legal systems? By addressing this question, the study contributes to the body of knowledge through a comparative and critical analysis of these marriage practices. Furthermore, it serves as a valuable reference for researchers, practitioners, and stakeholders concerned with contemporary issues affecting Muslim societies.

Finally, this article is structured into four sections. The first section provides an overview of the meaning of *Ziwaj*,

² Ibrahim Abdulrahman Ibrahim, *Al-Wāfi fī Sharḥ Qānūn al-Aḥwāl al-Shakḥīyyah* (Oman: Dar Al-Thaqafah, 1999), 33-34.

general rules, conditions of marriage, and an introduction to *Ziwaj Urfi*. The second section outlines the research methodology, while the third section discusses the concepts, legality, consequences, and legal frameworks surrounding *Ziwaj Urfi* in modern Muslim societies. The final section presents the study's conclusions and recommendations.

LITERATURE REVIEW

Marriage in Islam is based on fulfilling one's desires in a manner that pleases God Almighty, keeping away from immorality, evil, adultery, and fornication. The Prophet (SAW) emphasized its importance to young people, saying: "O young people, whoever among you can afford to get married, let him get married, for it is more effective in lowering the gaze and guarding one's chastity."³ Marriage is not considered a Sunnah of Islam solely because it satisfies the sexual instinct, but rather for its social, psychological, and religious benefits. Among these are: Marriage establishes a stable family where rights and duties are united by religious sanctity, making one feel that it is a sacred bond that elevates their humanity. It fosters a spiritual and psychological relationship befitting the dignity of humankind, raising individuals above mere physical desires. When the marital bond reaches this level of spiritual and emotional depth, it brings comfort and companionship to the soul.⁴ Al-Ghazali noted in his *book ihyā'*: "It provides comfort for the heart and strengthens one's ability to worship".⁵ The soul, by nature, tends to boredom and aversion to the truth, for truth often opposes its desires. If forced against its inclination, it may become rebellious; but when granted lawful pleasures, it finds strength and renewal. In comforting women, there is a source of relief from distress and a means to soothe the

³ Muḥammad ibn Ismā'īl al-Bukhārī, *Sahih al-Bukhārī*, Chapter of Marriage, hadith no. 5065, 388.

⁴ Manswab Mahsen Abdulrahman, *Muslim Family Law and Practice: A Practical Guide to the Laws of Marriage and Dissolution of Marriage* (Uganda: Islamic University in Uganda, 2024) 25-27.

⁵ Abu Hamid Mohammad Ghazali, *Ihyā' Ulum Al-Din* (Beirut: Dar Al-Ma'rifah, n.d) 30.

heart, allowing the righteous to find permissible rest.⁶ Almighty Allah affirms this in the Qur'an regarding the wife:

وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ

“*That he may find tranquility in her.*” (Ar-Rum
21 :30)

Moreover, marriage is the cornerstone of the family, and the family is the fundamental unit of society. It is within the family that individuals first experience the world, learn their rights and responsibilities, and develop feelings of intimacy, brotherhood, and humanity. The seeds of altruism and selflessness are sown within the family and either flourish or wither depending on the societal environment.⁷ In addition, the survival and progress of humanity depend on marriage. While other forms of relationships may preserve the species, they do not ensure a dignified human existence. Scientific studies and comparative research have shown that lawful marriage leads to healthy reproduction and stronger progeny. In contrast, illicit relationships often result in reduced birth rates and diminished social stability. Children born within marriage generally benefit from a nurturing environment that fosters proper growth and development. Furthermore, marriage is a source of mercy for both men and women.⁸ A woman finds in her husband a provider, allowing her to focus on the home and nurture her children in accordance with her natural role. Likewise, after the struggles and hardships of life, a man finds in his home a sanctuary—an oasis amid the desert of worldly challenges. Without marriage, life would lack shelter and stability. Though, in rare cases, separations may occur, Islam has legislated provisions for such situations. Finally, marriage fosters a sense of

⁶ “Mohammad Nabil Ghanim,” *Maqāṣid al-Sharī‘ah wa Ashkāl al-Ziwāj al-Mu‘āshirah*, accessed 1 January 2025, <https://al-furqan.com/ar-مقاصد-الشریعة-واشكال-الزواج-المعاص>.

⁷ Ismail Firano, “Objectives of Islamic Marriage: A Study of the Primary and Subsidiary Objectives,” *Dirasah: International Journal of Islamic Studies* 2, no. 1 (2024): 14-24, <https://doi.org/10.59373/drs.v2i1.21>.

⁸ Hayatullah Laluddin, et.al., “The contract of marriage and its purposes from Islamic perspective,” *Asian Social Science* 10, no 2 (2014): 141-143, <https://doi:10.5539/ass.v10n2p139>.

responsibility, carried out with love and devotion. *Imam Al-Ghazali* elaborated on this, stating: "Among the benefits of marriage is the discipline of the soul through the responsibilities of care and guardianship, fulfilling the rights of one's family, exercising patience with their character, enduring any hardships they may cause, striving to reform them and guide them to the path of religion, and earning lawful sustenance for their well-being. For these reasons, Islam has encouraged marriage and urged the youth to pursue it."⁹ The Prophet (SAW) reinforced this by saying:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَنْزَلِ
وُجُوهَكُمْ بَيْنَ وَجْهَاتِكُمْ وَحَقَّقَهُ

“And Allah has made for you wives of your own kind, and has made for you, from your wives, sons and grandson.” (An-Nahl 16:72)

To uphold the sanctity of marriage, certain fundamental requirements must be met. If any of these essentials are not fulfilled, the marriage may be considered either void or irregular. Various schools of thought define these essentials as follows: According to the Hanafi school, the key element of marriage is the formula (*Sighah*), which consists of *Ijab* (offer) and *Qabul* (acceptance).¹⁰ The *Malik* school identifies the essential elements as the formula (*Sighah*), the spouses, the *Walī* (guardian), and the dowry.¹¹ The *Shafi'i* school considers the formula (*Sighah*), the spouses, the *Walī* (guardian), and the presence of two witnesses as necessary components.¹² The *Hanbali* school regards the formula (*Sighah*) and the spouses as the core essentials of marriage.¹³ In

⁹ Ghazali, *Ihyā' Ulum Al-Din*, 31-32.

¹⁰ Alauddin Abi Bakr Bin Mas'ud Al-Kasani, *Badā'i' al-ṣanā'i' fī tartīb alsharā'i'* (Beirut: Dar al-Kitab al-Arabī, 1982), 2.229.

¹¹ Ahmad bin Idris al-Qarafī, *Al-Adhkār* (Beirut: Dar al-Kutub al-Ilmiyah, 1989), 4.32.

¹² Muhammad bin Idris Shafi'i, *Al-Umm* (Beirut: Dar al-Kutub al-Ilmiyah, 1980), 2.36.

¹³ Mansour bin Yunus bin Idris al-Bahout, *Kashshāf al-Qinā'* (Beirut: Dar al-Kutub al-Ilmiyah, 1982) 5.36.

conclusion, For a marriage contract to be valid, three fundamental elements must be present: (1) *Sighah* (Offer and Acceptance) consists an offer and acceptance. The offer comes from the wife's guardian, who may say, "I marry you" or "I give you my daughter in marriage." The acceptance comes from the husband, who may respond, "I accept" or "I take her in marriage." The wisdom behind this formula is to ensure the consent of both parties, as consent is an internal matter that cannot be directly observed. In Sharia law, the offer and acceptance serve as clear evidence of the mutual consent of both contracting parties. The marriage contract requires the following: (i) There should not be a significant delay between the offer and acceptance that might give the impression of a rejection. However, a brief delay is generally acceptable. (ii) There should be no disparity between the offer and acceptance when using foreign languages or expressions. (iii) The offer and acceptance must align. (iv) Both parties involved in the contract must be fully competent at the time of the contract. If one of them becomes mentally incapacitated or faints during the process, the contract will be void. (v) There must be evidence of the wife's identity, such as the guardian stating, "Your wife is so-and-so,". (vii) The formula used should not be temporary, such as someone saying, "I will marry you for a period of time" ¹⁴ (2) Competent parties: For a contract to be valid, the individual entering into it must possess legal capacity (*ahliyyah*). If a person lacks the necessary qualifications—such as being a minor or mentally incapacitated—the contract is deemed invalid. Muslim jurists have outlined specific conditions for spouses in marriage contracts: Conditions for the Husband: (i) He must be a Muslim. (ii) He cannot have more than four wives, as exceeding this limit is prohibited. (iii) He must not suffer from a permanent illness. However, the Hanafi and Shafi'i schools hold a differing opinion, allowing marriage for those who are ill. (iv) His male identity must be certain. (v) The marriage contract must specify the wife clearly. (vi) The marriage must be entered into willingly; coercion renders it invalid. Conditions for the Wife: (i) She must not be in a state of *ihram* for Hajj or Umrah. (ii) She must be explicitly identified in the marriage contract, a requirement that applies to the husband as well. (iii) She must not already be married or be in her waiting

¹⁴ Majmū' al-Mu'allifin, *Al-Fiqh al-Manhajī 'alā Madhhab al-Imām al-Shāfi'ī rahimahu Allāhu ta'ālā* (Damascus: Dār al-Qalam, 1992), 5.55.

period (*'iddah*). (iv) Coercion is strictly forbidden, except in cases where *ijbār* (guardian-enforced marriage) applies. (v) She must not be prohibited to the husband due to reasons such as close blood relations (*nasab*), breastfeeding ties (*radā'a*), or marital affinity (*musāharah*). (vi) She must be either a Muslim or belong to *Ahl al-Kitāb* (i.e., Christian or Jewish).¹⁵ (3) condition of marriage: The conditions of a marriage contract are classified into four main categories: (1) Conditions for Contracting (*'Inqad*): These are the fundamental requirements that must be fulfilled for a marriage contract to be valid. If any of these conditions are missing, the contract is considered invalid according to the consensus of the four major Islamic schools of thought. These conditions are divided into two types: Those related to the contracting parties (the spouses). Those related to the *Sighah* (offer and acceptance). (2) Conditions for Validity (*Sahīh*): These are the criteria necessary for the legal recognition of the marriage contract. Failure to meet these conditions renders the contract voidable (*Fasid*) according to Hanafi jurists, whereas the Maliki, Shafi'i, and Hanbali schools consider it entirely void (*Batil*). The conditions for validity include: The wife must not be permanently or temporarily prohibited to the husband. Two witnesses must be present at the marriage ceremony. (3) Conditions for Effectiveness (*Nafa'*): These conditions pertain to the individual responsible for officiating the marriage contract, who must have the authority to do so. The conditions ensuring the effectiveness of the contract include: The officiant must be *Mumayyiz* (capable of understanding and making legal decisions). The closest guardian must be present. (4) Conditions for Continuity (*Luzum*): These conditions determine whether the marriage will remain binding. If any of these conditions are violated, either party has the right to annul the marriage. The key conditions are: If one spouse discovers a genital defect in the other, they have the right to seek annulment. If a spouse falsely claims lineage to a particular tribe and the truth is later revealed, the other spouse has the right to annul the contract.¹⁶

¹⁵ Manswab Mahsen & Abdulhafiz Walusimbi, "Evaluation of the Kenyan Kadhis Court Bench Book from an Islamic Sharia Perspective: Focusing on the Marriage Section," *Jurnal Syariah* 33, no. 1 (2025): 71, <https://doi.org/10.22452/syariah.vol33no1.3>.

¹⁶ Ibrahim Al-Aqib Ahmad Jalal Din, *Aḥwāl al-Shakhsīyyah* (Sudan: Sudan Open University, 2006), 34-37.

Apart from the pillars and conditions of marriage, Islamic law emphasizes marriage registration, which serves multiple purposes: authenticating the union, publicly announcing it, and clearly disclosing its terms. This process distinguishes a legitimate marriage from fornication, safeguards the rights of both parties, and helps prevent corruption or disputes that may arise from undocumented unions. The legislation requiring marriage registration may be derived from the Quranic verse that mandates documenting debts to protect individuals' rights and honor, as well as to minimize the risk of conflicts. Such measures contribute to the security of families and the overall stability of society. Therefore, Islamic Sharia and personal status laws in Arab and Islamic countries, as well as in nations worldwide, emphasize the documentation of marriage contracts.¹⁷ This necessity arises due to evolving times, changing circumstances, and the need to safeguard people's rights from being violated or lost.

In previous eras, Muslims concluded marriage contracts using specific words and attested them with witnesses, without the necessity of written documentation. However, with the evolution of society and changing circumstances—along with issues such as negligence, forgetfulness, and the death of witnesses—the need arose to formally record and document all contracts related to people's personal affairs. Consequently, the documentation of marriage contracts in writing became essential. This necessity has led to the inclusion of legal provisions in many laws requiring marriage documentation in accordance with specific regulations.¹⁸ Ibn Taymiyyah states: “The Companions did not write down zakat because they did not practice deferred dowries; rather, they paid the dowry in full at the time of marriage. However, when people began to delay payment of the dowry, the period became long, and they would forget. As a result, they started recording the deferred payment, which then served as evidence to prove both the truth of

¹⁷ Abdulrazak Baqazulah, “Tawthīq al-Ziwāj bayna al-Sharī‘ah wa al-Qānūn: Tawthīq al-Ziwāj li-Muslimī Faransā bayna al-Sharī‘ah wa al-Qānūn” (Master dissertation, The European Institute of Human Sciences in Paris, 2022), 16.

¹⁸ Jumadan Ardinsa, “Ḥukm Al-Zawāj Al-‘Urfī fi Al-Islām” (Master dissertation, Syarif Hidayatullah Jakarta, 2023), 23.

the obligation and that the woman was his wife.”¹⁹ This indicates that the practice of documenting marriage contracts began when Muslims started deferring the dowry or part of it. Over time, this written documentation also became proof of the marriage itself. The journal *Al-Sahah* reported that the spread of this phenomenon among some young people in Egypt has political dimensions. *Ziwaj Urfi* (customary marriage) has become common among young people, particularly in universities, leading to a significant rise in such unions each year. A striking aspect of this trend is the high number of cases related to customary marriages, with approximately sixty thousand cases concerning lineage verification currently before Egyptian courts.²⁰ Finally, customary marriage is widespread in universities across Egypt and has also spread to the Arab countries.

There are several definitions of *Ziwaj Urfi*, but the most common one describes it as a marriage that fulfills its legal requirements without being officially documented.²¹ Some people who practice this marriage argue that customary marriage is valid under Sharia law and carries legal consequences regardless of whether it is written or unwritten. On the other hand, the Contemporary Jurisprudential Research Journal defines *Ziwaj Urfi* as a modern concept referring to a marriage contract that lacks official documentation, whether written or unwritten.²² Similarly, Abdul Fattah Amr Wafi describes it as a contract that meets all legal conditions but is not recorded in an official or customary document.²³ Furthermore, Mohammad Fouad Shaker provides another perspective, stating that *Ziwaj Urfi* is a marriage between a man and a woman that may be contracted verbally through mutual consent in a single sitting, with the testimony of two witnesses and a well-known understanding between the

¹⁹ ‘Abd al-Malik ibn Yūsuf al-Muṭṭlaq, *Al-Zawāj Al-‘Urfi* (Riyadh: Dar Al-Asimah, 2007), 190.

²⁰ *Ibid.*, 190.

²¹ Kamāl Šālīḥ al-Bannā’, *al-Zawāj al-‘Urfi wa Munāza‘āt al-Bunūwah* (Egypt: Dar Al-Kutub Al-Qanuniyah, 2005), 6.

²² Mu’assasat al-Buḥūth wa al-Dirāsāt al-Fiqhiyya wa ‘Ulūm al-Qur’ān al-Karīm, “Ziwaj Urfi,” *Journal of Contemporary Fiqh Research* 36, no. 1, (1998): 194.

²³ Abdulfatah Amru, *Al-Siyāsah al-Shar‘iyyah fī al-Aḥwāl al-Shakḥiyyah* (Jordan: Dar Al-Nafais, 1996), 194.

parties. However, in most cases, such marriages occur without public announcement. Despite the absence of formal documentation, the contract remains valid.²⁴ Based on the definition above, *Ziwaj Urfi* is considered valid under Sharia law as it meets the necessary legal requirements. However, it lacks official registration with the marriage registrar for various reasons.

Marriage registration is mandatory in several countries, including Algeria, Bahrain, Bangladesh, Brunei, Indonesia, Iraq, Jordan, Lebanon, Malaysia, Oman, Pakistan, Palestine, Qatar, Singapore, Tunisia, Turkey, and the United Arab Emirates (UAE).²⁵ Nevertheless, non-registration remains common in practice. While failure to register a marriage does not always invalidate it, it may restrict legal protections, including rights related to inheritance, custody, and paternity.

A study identifies several key factors contributing to the prevalence of *Ziwaj Urfi*: (i) Polygamy is one of the most common reasons for customary marriage. A man marrying a second wife may prefer to keep it secret, especially from his first wife. The absence of official documentation makes this possible, as civil law generally upholds monogamy as the legal standard for marriage.²⁶ (ii) Financial difficulties are a major driving force behind customary marriages. Many couples opt for this arrangement due to their inability to afford the financial obligations of a formal marriage.²⁷ (iii) Concealment of Pregnancy in some cases, customary marriage serves as a means to address societal stigma associated with out-of-wedlock pregnancy. By entering into an informal marriage contract—one that is not officially registered before a judge or the Religious Affairs Office—individuals seek

²⁴ Mohammad Fuad Shaker, *Al-Zawāj al-Bāḥil* (Cairo: Maktab Awlad Sheikh Liturath, 1997), 26.

²⁵ “Musawah,” Positive development of Muslim family law, accessed 24 November 2025, <https://www.musawah.org/wp-content/uploads/2019/02/>.

²⁶ Mohammad Mostafa, Personal interview by Manswab Mahsen, 4 April 2025.

²⁷ “Al-Arabiyyah,” ‘Asyāwiyāt li-al-Zawāj al-‘Urḥī fī al-Sa‘ūdī bi 4000 Riyāl, accessed 3 March 2025, <https://www.alarabiya.net/articles/2004%2F12%2F14%2F8718>.

to avoid social disgrace.²⁸ (iv) The legal obstacles imposed by the legislator hinder couples from documenting their marriage contracts due to the numerous requirements they must fulfill, which demand significant time and effort from both spouses. As a result, they lack official documents proving their union, compelling them to marry without formal documentation. Consequently, the complex legal requirements surrounding marriage contribute to the prevalence of such unions. Some couples opt for this approach to circumvent the restrictions associated with official marriage, believing it shields them from potential complications.²⁹ (vi) In Algerian legislation, marriage to foreign women is subject to several conditions, including the requirement for prior approval from the Regulatory Directorate, which verifies the man's adherence to the Islamic faith. The challenges in obtaining these documents often drive individuals to seek a simpler way to legitimize their marriage, leading them to enter into a customary marriage.³⁰ (vii) minor marriage: Some personal status laws establish a minimum age for marriage. If a marriage takes place before this legal threshold, it cannot be officially registered with the Sharia court. Consequently, guardians often resort to customary marriage as an alternative to fulfill their objectives.³¹ (viii) The financial circumstances of individuals preparing for customary marriage often influence their decision, as official marriage typically entails significant financial burdens that the husband may struggle to afford. Factors such as low wages, widespread unemployment, and the high cost of living exacerbate this issue. As a result, some individuals opt for customary marriage as an alternative to documented marriage in order to avoid these financial strains.³² (xi) Social customs are the shared practices and traditions that bind a community together. In

²⁸ Kombo juma, Mr. (Zanzibari). Personal interview by Manswab Mahsen. Islamic University in Uganda, April 7, 2025.

²⁹ Jamal bin Mohammad Mahmoud, *al-Zawāj al-‘Urfī fi Mīzān al-Islām* (Beirut: Dar Al-Kutub Al-Ilmiya, 2004), 96.

³⁰ Abdallah Badawi, “Uqūd al-Zawāj al-‘Urfīyah Bayna Quṣūr Ahkām al-Qānūniyah wa Muṭālabāt al-Mujtama’,” *A judicial journal issued by the Algerian Supreme Court* 1, no. 2 (2001): 27.

³¹ Marabiya Omar, Personal interview by Manswab Mahsen, Lamu-Kenya, 4 January 2020.

³² Sheikh Abdulatwif Ibrahim, Mr. (Mombasa). Personal interview with Manswab Mahsen. Mombasa-Kenya, January 4, 2024.

many societies, marriage rituals—ranging from engagements and contractual agreements to ceremonies—continue to be deeply ingrained traditions. These traditions are passed down through generations, and their observance is often considered sufficient to render a marriage both legally valid and socially acceptable.³³ (xii) In some Muslim societies, girls experience delayed marriage due to various factors and feel pressure from parents, family, and society. Consequently, some women may feel compelled to enter into a marriage through *ziwaj urfi*, submitting to this alternative form of union.³⁴

In term of social consequences this kind of marriage lacks official recognition under the law, it undeniably has negative repercussions for both spouses. One significant issue arises in matters of inheritance—if one spouse passes away, the surviving partner cannot legally claim an inheritance from the deceased. Women, in particular, bear the greatest burden of this type of marriage. By accepting such a union, they put their future at risk, as the absence of legal recognition makes it impossible to obtain a divorce if the marriage is later denied. Without the legal status of a wife, a woman is deprived of the rights typically granted by law, such as alimony, the right to a waiting period (*'iddah*), and other legal protections.³⁵ Furthermore, if a woman wishes to remarry, she is required to present a divorce certificate. Since her customary marriage was never legally recognized, she cannot obtain such a document, effectively preventing her from remarrying.³⁶

In related to the Rights and Well-being of Children, Almighty Allah has commanded that they be treated with kindness and raised with care. A child has an innate need for love and a

³³ Mahmoud Samir Abdulfatah, *At-Tanzīm al-Qānūnī wa al-Ijtimā'ī lil-Ushrah* (Cairo: Dar Al-Jami'a Al-Ma'rifiyah, 2005), 42.

³⁴ Jalal Nasimah, “Awāmil Intishār Zāhirat al-Zawāj al-'Urfī fī Manṭiqat al-Janūb lil-Mujtama' al-Jazā'ir,” *Majalat Al-Afaq Al-Imiyah* 11, no. 3 (2019): 549.

³⁵ Muharam Lashein, “al-Athār al-Salbīyah li-al-Zawāj al-'Urfī,” YouTube, 7 April 2025, https://www.youtube.com/watch?v=R_s2YvJwuls

³⁶ Walid Abdulsalam, Dr. (Bahrain). Personal Interview with Manswab Mahsen. March 25, 2025.

sense of belonging—to have parents he can take pride in, who fulfill his material and emotional needs, ensuring he does not experience emotional neglect. One of the fundamental rights of children is the right to lineage, which they may be deprived of if their parents' marriage is informal. In some cases, a father may deny his child's lineage to evade responsibility, or if the father passes away before officially acknowledging the child, the child may be left without legal recognition. This can lead to social exclusion and isolation, particularly in conservative Islamic societies, where children without known parentage are often stigmatized, despite their innocence in the matter.³⁷ Such societal attitudes can cause severe psychological distress, including depression, anxiety, agitation, and withdrawal, which may, in turn, push these children toward delinquency or criminal behavior. Moreover, the lack of legal recognition can deprive them of essential rights, such as access to education, as they may be unable to obtain the necessary identification documents. This, in turn, contributes to the spread of illiteracy among such children, further deepening their marginalization.

In correlated to the effect of society, the family is the fundamental pillar of any society. When built on strong foundations and sound principles, it fosters societal strength and stability. However, in the absence of these foundations, the family unit weakens, leading to societal fragmentation and instability. As one scholar aptly states, "Marriage is not merely a psychological phenomenon between two individuals who choose to marry, but rather a social institution that requires societal recognition and validation."³⁸ A stable and well-structured family is essential for the development of a stable and prosperous society, and this can only be achieved through legal and formalized marriage. When marriages are not documented or legally recognized, they inevitably lead to various negative consequences—not only for the family, as previously discussed, but for society as a whole. Customary marriages, in particular, can give rise to serious social issues, including lineage confusion, widespread illiteracy,

³⁷ Extra News, "Ma Rai Azhar wa Al-Qanun fi Ziwaj al-'Urfi wa Ta'thiruhu 'ala al-Mujtama'," YouTube, 5 April 2025, <https://www.youtube.com/watch?v=B_nRd4L9wlk>.

³⁸ Mahmoud Hassan, *Al-'Usra wa Mushkilatuha*, (Beirut: Dar Al-Nahdha Al-Arabiyyah, 1981), 15.

psychological disorders, delinquency, and crime. Such challenges hinder societal progress, prosperity, and overall development

METHODOLOGY

This study employs a qualitative research approach, utilizing doctrinal and socio-legal research methods. The doctrinal method focuses on analyzing classical and contemporary Islamic legal sources to determine the legitimacy of *Ziwaj Urfi* within Islamic jurisprudence. Meanwhile, the socio-legal method investigates the practical implications of these marriage forms in modern Muslim societies, considering their legal recognition, social consequences, and ethical concerns. The research will rely on both primary and secondary sources: (i) Primary Sources: The Qur'an, Hadith, classical Islamic legal texts (*fiqh*), and contemporary fatwas from various Islamic scholars and institutions. (ii) Secondary Sources: Academic journals, books, legal documents, reports from Islamic legal councils, and case studies from countries where these marriage practices are prevalent. The researcher will Examine classical fiqh literature and modern scholarly interpretations regarding the validity and permissibility of *Ziwaj Urfi*. Also, Investigate the stance of different Muslim-majority countries regarding these marriages, analyzing their legal frameworks and judicial decisions. Additionally, they will conduct interviews-both in person and online-with Islamic scholars, legal practitioners, and affected individuals in selected regions to gain insights into the real-life experiences and challenges associated with these marriages. The study respondents were selected using simple random. A total of 10 participants took part in the study. The respondents were drawn from different countries like Kenya coastal region, Mbale-Uganda, Zanzibar, Saudi, Egypt and Bahrain. This study focuses on selected Muslim-majority countries where *Ziwaj Urfi* marriages are practiced. It does not seek to provide a universal ruling but rather a critical assessment based on Islamic jurisprudence and social realities. The research may face limitations in obtaining personal testimonies due to cultural sensitivities and legal restrictions. The expected outcome aims to provide a comprehensive legal and social analysis of *Ziwaj Urfi*, offering insights into their implications for modern Muslim societies. It will contribute to scholarly discussions on Islamic

family law and propose recommendations for legal and social reforms where necessary.

DISCUSSION

When examining customary marriage, it is clear that carries both advantage and disadvantage. Islamic law, with all its rulings, commands, and prohibitions, aims to maximize benefits and minimize harms. The advantages and disadvantages of customary marriage remain a topic of consideration debate. Its benefits lie in its potential to achieve the objectives of marriage—chastity, stability, and family formation—provided that it fulfills its legal requirements, such as the consent of both parties, the guardian, witnesses, and public declaration. This renders it a valid contract in some of its forms. However, the disadvantages emerge when public declaration is absent or the relationship is concealed from society or from guardians. In such cases, the contract becomes a means of deception or a temporary relationship that violates the rights of the wife and children, leading to disputes over lineage, alimony, and inheritance. Therefore, Muslim jurists have expressed differing opinions regarding the ruling on *Ziwaj Urfi*. There are two primary perspectives on the matter.

The first opinion holds that such a marriage is permissible as long as its essential pillars and conditions are fulfilled. However, proponents of this view emphasize the importance of formal documentation and written records, particularly in the modern era. This stance is widely supported by contemporary Muslim scholars. In this regard, Sheikh Nasser bin Suleiman Al-Omar states that if a customary marriage fulfills all the necessary conditions—such as the presence of a guardian, witnesses, an offer and acceptance, a dowry, and the woman’s consent—then it is a legitimate marriage, even if it is not officially registered.³⁹ Similarly, Sheikh Youssef Al-Qaradawi views customary marriage as a valid union, despite its lack of official documentation. He describes it as a regular marriage in which the husband assumes financial responsibility for housing and supporting the wife. In many cases, the man is already married and keeps this second

³⁹ Al-Mutlaq, *Al-Zawāj Al-‘Urfi*, 500.

marriage secret from his first wife for various reasons.⁴⁰ Sheikh Swaleh bin Fawzan affirms that a valid marriage contract requires the presence of a guardian, two witnesses, an offer and acceptance, and the absence of any legal impediments. He emphasizes that official documentation is not a condition for the validity of the marriage. However, notaries may require it for legal purposes, such as proving the wife's identity in the family register or facilitating international travel, primarily to prevent forgery and fraud. Nevertheless, from a legal standpoint, the marriage remains valid without formal documentation.⁴¹ Additionally, Sheikh bin Muhammad Al-Luhaidan, the head of the Supreme Judicial Council in Saudi Arabia, was asked about the ruling on customary marriage. He responded that as long as there are no legal impediments and the marriage includes a guardian and witnesses, it is considered valid, even if a wedding feast is not held—though holding one is preferable.⁴² Finally, Sheikh Al-Ashqar clarifies that if a customary marriage is conducted secretly between a man and a woman without a guardian or witnesses, it is unanimously deemed invalid by scholars.⁴³ However, if it is conducted with a guardian and witnesses but kept secret, it is considered invalid according to the Maliki school of thought,⁴⁴ while the *Shafi'i*, *Hanafi*, and *Hanbali* schools regard it as valid.⁴⁵

Proponents of the validity and permissibility of *Ziwaj Urfi* (Customary marriage) present various evidences to support their stance. The majority of jurists, including the *Shafi'is*, *Hanafis*, and *Hanbalis*, uphold this view. *Al-Kasani* states that if a marriage contract is concluded and the parties agree to keep it secret,

⁴⁰ Sheikh Yussuf Al-Qardawi, *al-Ziwāj al-Misyār Ḥaqīqatuhu wa-Ḥukmuhu* (Cairo: Maktab Al-Wahf, 2000), 15.

⁴¹ Sheikh Swaleh Al-Fawzan, “Hal Yajooz al-Ziwaj al-‘Urfi? [Is customary marriage permissible?],” YouTube, 5 April 2025, <https://www.youtube.com/watch?v=y0PwW5ibPso>.

⁴² Al-Muṭṭlaq, *Al-Zawāj Al-‘Urfi*, 501.

⁴³ Omar Suleiman Al-Ashqar, *Aḥkām al-Ziwāj fī Ḍaw’ al-Kitāb wa-al-Sunnah* (Jordan: Dar Al-Nafais, 1997), 177.

⁴⁴ Mohammad bin Ahmad Arafah, *Ḥāshiyat ad-Dusūqī ‘alā ash-sharḥ al-kabīr* (Cairo: Maktab Zahran, n.d), 2.237.

⁴⁵ Shayban, *Ikhtilāf Aima Al-Ulama* (Beirut: Dar Al-Kutub Al-Ilmiyah, 2002), 2.38.

advising one another to do so, the contract remains valid, although it is discouraged, as it contradicts the recommendation to publicly announce a marriage.⁴⁶ In addition, Imam *Al-Shafi'i* similarly affirms that if a marriage takes place and the witnesses instruct the couple to keep it secret, the marriage is still legally permissible. However, he disapproves of secrecy, as it may give rise to suspicion.⁴⁷ Furthermore, Ibn Taymiyyah further asserts that the validity of a marriage contract is not nullified by secrecy. He explains that as long as there are witnesses, along with the spouses or a trusted companion aware of the contract, the marriage remains legitimate. He emphasizes that a marriage contract is fundamentally a lawful agreement, and any contract that meets its essential Islamic pillars and conditions is considered valid and permissible, provided it does not lead to corruption or prohibited acts.⁴⁸ On the other hand, *Ziwaj Urfi* (Customary marriage), therefore, remains lawful in Islamic law as long as it fulfills its essential requirements. The noble hadith supports this principle, as narrated by Aisha (may Allah be pleased with her), in which the Prophet (peace and blessings be upon him) said: "There are four essentials in marriage: the guardian, the husband, the wife, and two witnesses."⁴⁹ This hadith indicates that written documentation is neither a condition nor a pillar of a valid marriage contract. The necessity of official registration varies from one country to another, and in some cases, imposing such documentation may hinder marriage, potentially leading young people toward unlawful relationships.

A second group of scholars argues that customary marriage is impermissible in Islam. Sheikh Nasr Farid Wasil, former Grand Mufti of Egypt, asserts that customary marriage is invalid under Islamic law in the present era. He emphasizes that religious authority has weakened, false testimony has become widespread, and such marriages often result in the loss of marital

⁴⁶ Alauddin Abi Bakr Bin Mas'ud, *Bada'i' as-Sana'i' fi Tartib ash-Shara'i'* (Beirut: Dar Al-Fikr, 1997), 2.377.

⁴⁷ Shafi', *Al-Umm*, 36.

⁴⁸ Ibn Taymiyyah, *Majmu' Fatawa* (n.p: n.d, 1979), 33.158.

⁴⁹ Ali ibn Umar al-Dāraqutnī, *Sunan al-Dāraqutnī, Chapter of Marriage*, hadith no. 3521, 321.

rights and lineage.⁵⁰ Similarly, Sheikh Muhammad Mutawalli Al-Shaarawy strongly condemns customary marriage, equating it with fornication. He argues that secrecy in marriage contradicts the fundamental Islamic principle of publicizing the union. He questions why anyone would willingly accept a marriage that remains hidden, comparing such secrecy to the behavior of criminals and immoral individuals who engage in illicit relationships. He categorically declares: “Customary marriage is forbidden because it lacks the conditions of announcement and publicity.”⁵¹ Also, Sheikh Muhammad Safwat Nourdin also opposes customary marriage, stating that even if all its essential pillars are met, it remains prohibited because it contradicts the authority of the legal guardian. Since the guardian’s role does not contradict Shari’ah and does not command disobedience to Allah, disregarding it renders the marriage invalid.⁵² In addition, Sheikh Muhammad Sayyid Tantawi, the former Grand Sheikh of Al-Azhar, also deems unregistered marriage unlawful. He asserts that scholars unanimously agree on the invalidity of both secret marriages and customary (common-law) marriages. Though such marriages may meet the essential requirements of a contract, they lack proper documentation, which he considers necessary for protecting women’s rights and maintaining public order. He personally refuses to officiate or recognize such marriages, stating: “I do not witness it, I do not approve of it, and I do not attend its proceedings.”⁵³ Finally, the predominant opinion among Maliki scholars holds that customary marriage is impermissible, as it is invalid and can be annulled. While they do not require testimony for the validity of the marriage contract itself, they stress that public announcement is obligatory. According to the

⁵⁰ Ibrahim Abdo Sharfawi, *Al-Ziway Al-Urfi fi Al-Mizan Al-Shari’* (Cairo: Maktab Al-Safa, 2000), 38.

⁵¹ Abu Ahmad An-Nada, *Asbab al-Ziway al-‘Urfi wa Mawqif al-Shari’ah* (n.p: n.d), 27-28.

⁵² Hamli Mohammad Mahmoud, *Al-Ziway al-‘Urfi fi Mizan al-Islam*, (Beirut: Dar Al-Kutub Al-Ilmiyyah, 2003), 82.

⁵³ Abdallah Mohammad Ibrahim Khalil, “*Šuwar Muḥdathah li-‘aqd Al-Zawāj Al-‘urfī fī Daw’ Al-Fiqh Al-Islāmī Wa-Qānūn Al-Aḥwāl Al-Shakhṣiyyah*” (Master dissertation, University of Najah, 2010), 121.

Malikis, a valid marriage must be publicized, and secrecy renders it void.⁵⁴

Proponents of the prohibition of *Ziwaj Urfi* (customary marriage) present various pieces of evidence to support their stance. They argue that customary marriage contracts often fail to meet the essential pillars and conditions required for a valid Sharia-compliant marriage. Moreover, even though customary marriage is unofficial, it leads to numerous social problems that negatively impact the family, such as parental disobedience, betrayal, dishonesty, and other undesirable consequences.⁵⁵ The Maliki school of thought bases its view on the invalidity of customary marriage on hadiths that emphasize the importance of announcing a marriage. For instance, the Prophet (SAW) said, as narrated by Muhammad ibn Hatib al-Jumahi: "The difference between what is lawful and what is unlawful is the voice and the father in marriage."⁵⁶ The term *sawt* (voice) in this context refers to the public announcement of marriage. Ibn Abd al-Malik explains that this hadith does not imply that the only distinction between a lawful and unlawful marriage is the announcement. Rather, the presence of witnesses at the contract is necessary to validate the marriage. The hadith primarily encourages publicizing the marriage to prevent secrecy. The Sunnah supports announcing marriage through the beating of tambourines, expressions of congratulations by those present, and the recitation of permissible poetry. In addition, a key jurisprudential principle states: "Whatever is necessary to fulfill an obligation becomes obligatory itself." Without proper documentation, registration, and public announcement of a marriage, significant harm and hardship arise, particularly concerning the wife's rights and matters of inheritance. Consequently, the documentation and registration of marriage become obligatory to prevent harm. Another fundamental principle in Islamic jurisprudence asserts that "harm should be eliminated as much as possible."⁵⁷ Another legal

⁵⁴ Arafah, *Hashiyat Ad-Dasouq*, 237.

⁵⁵ Jumadan, *Hukmu Al-Ziwaj Al-Urfi*, 56.

⁵⁶ Ahmad ibn Shu'ayb ibn 'Alī ibn Sināni, Sunan al-Nasā'ī, *Chapter of Announcement the marriage*, hadith no. 127.

⁵⁷ Mohammad Amim Al-Ihsan, *Qawā'id al-Fiqhiyyah* (Pakistan: Al-Sudfi zbibsharz, 1986), 88.

maxim: "There should be no harm or reciprocating harm."⁵⁸ In this context, harm refers to the consequences of an undocumented and unregistered marriage, reinforcing the necessity of proper legal recognition.

After reviewing and analyzing the opinions of jurists along with their comprehensive evidence, we inclined toward the second opinion, considering the demands of our time and the necessity of safeguarding essential interests. Marriage registration plays a vital role in both Islamic and legal frameworks, ensuring that marital rights and responsibilities are clearly defined and protected. Its significance can be understood from multiple perspectives: Registration serves as official proof of marriage, safeguarding the rights of both husband and wife in cases of disputes, divorce, or inheritance. It prevents situations where a husband may deny the marriage, thereby securing the wife's legal and financial entitlements, including maintenance (*nafaqah*) and inheritance. Additionally, it ensures that children born within the union are legally recognized, granting them inheritance rights, legitimacy, and essential legal documentation such as birth certificates. Furthermore, Prevention of Social and Legal Issues: Unregistered marriages, such as *Ziwaj Urfi*, often lead to secrecy, deception, and social instability. Proper registration promotes transparency and accountability, reducing the risk of fraudulent marriages, forced unions, and unlawful polygamous relationships that violate legal and Shariah conditions. Also, one of the fundamental principles in Islamic law is the prevention of harm (*lā ḍarar wa lā ḍirār*). In addition, it is one of the established principles among jurists that if benefits are mixed with harms, the benefits are nullified in order to prevent those harms. For this reason, they say, 'Preventing harm takes precedence over attaining benefit.'⁵⁹

Registering a marriage protects spouses and their families from potential harm caused by the absence of legal proof.

⁵⁸ Tāj al-Dīn ‘Abd al-Wahhāb al-Subkī, *Al-Ashabah wan Nazair* (Beirut: Dar Al-Kutub Al-Ilmiyah, 1991), 1.41.

⁵⁹ Muḥammad Muṣṭafā al-Zuhaylī, *al-Qawā'id al-Fiqhiyyah wa Taṭbīqātuhā fī al-Madhāhib al-Arba'ah* (Dimashq: Dār al-Fikr, 2006), 1.238.

Furthermore, it ensures compliance with national laws and Islamic legal frameworks, allowing spouses to access their rightful entitlements, including inheritance, custody, and social benefits. Furthermore, Marriage registration upholds the dignity of the couple and their families by preventing disputes over the validity of the marriage. It fosters trust, accountability, and moral responsibility within society, strengthening the institution of marriage. Finally, in conclusion, marriage registration is not merely a legal formality but a crucial safeguard that upholds justice, protects rights, and ensures social stability in accordance with both Islamic principles and legal requirements.

CONCLUSION

Customary marriage is gaining prominence in several Muslim societies due to social, economic, legal, and regulatory factors that compel individuals to resort to it in an effort to remain within the bounds of Islamic law. The key distinguishing feature of customary marriage is the absence of formal registration. Although registration is not one of the essential elements or conditions for a valid marriage in Islamic jurisprudence, it has been strongly advocated in contemporary times to safeguard the rights of spouses and children and to uphold public order within society.

Proponents of the permissibility of customary marriage argue that as long as it fulfills the essential Shariah requirements—such as the presence of a guardian, witnesses, consent, and a dowry—its validity remains unaffected by the lack of official registration. They maintain that secrecy does not invalidate the marriage under Islamic law. On the other hand, opponents contend that customary marriage often compromises the proper fulfillment of rights between spouses and children, leading to harm—something the Shariah seeks to prevent or eliminate, as stated in the legal maxim “*harm must be removed*” (*al-darar yuzāl*). Despite the divergence of scholarly opinion on the permissibility of customary marriage, its negative impact on achieving the objectives of marriage (*maqāṣid al-nikāḥ*) has led contemporary societies to consider the formality of registration as a necessary component of a valid marriage. This aligns with the Islamic legal requirement of documenting contracts to ensure transparency and protection of rights.

Therefore, it is recommended that Muslim clerics raise awareness within their communities about the importance of marriage registration and the potential harms of unregistered customary unions. Furthermore, Muslim marriage institutions should adopt a phased and systematic approach to ensure that all marriages are properly documented and recorded in official marriage registers, contributing to better governance and social order in Muslim societies.

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