



An Analysis of the Effectiveness of the Islamic Legal Framework of Matrimonial Incorporeal *Darar* (Mid) and the Practical Challenges in Obtaining Judicial Remedies in Kano State

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Abstract

Matrimonial incorporeal injury (MID) refers to non-physical harms inflicted by husbands on wives, including verbal abuse, cruelty, neglect, failure to maintain, sexual deprivation, abandonment, and controlling behavior. This study addresses a central challenge in adjudicating MID: the difficulty of producing adequate evidence because such injuries typically occur in private, leading courts to overlook them and rarely award compensation. The paper aims to identify judicial shortcomings in Shari'a court handling of MID and to propose ways to enhance the effectiveness of the Islamic legal framework in delivering appropriate remedies. Adopting a qualitative, interpretivist phenomenological design, the study collected data through semi-structured interviews with 30 stakeholders (judicial officers, lawyers, policymakers, women's groups, psychiatric doctors, and MID victims) conducted between November 2024 and January 2025 (in-person/virtual; 30-60 minutes). Interviews were recorded, transcribed, and thematically analyzed using Benner's Interpretive Phenomenological tradition, supported by triangulation with scholarly literature and official documents. Findings indicate that MID is frequently under-recognized or ignored due to evidential hurdles, limited awareness of women's rights, and insufficient judicial appreciation of the MID concept. The study recommends intensified public education on matrimonial rights and improved judicial procedures supported by principled judicial activism to facilitate evidence extraction and ensure fair remedies.

Keywords: Matrimonial Incorporeal Darar, Islamic Family Law, Judicial Remedies, Evidentiary Challenges, Women's Rights, Shari'a Court Practice, Kano State Judiciary.

Introduction

The Islamic legal framework of *darar* serves as a mechanism that provides its effectiveness and practical challenges in obtaining judicial remedy in view of the lack of awareness among litigants about their rights, judicial activism, and the establishment of MID in Sharia courts, in relation to the difficulty involved in proving cases and judicial and non-judicial remedies. Given that this topic has been overlooked by various academics and researchers, a phenomenological qualitative research approach is significant to apply, aiming to explore the perspectives and experiences of government officials and other private bodies involved in accessing justice for litigants. The research is largely devoted to presenting and analysing empirical data, organised according to the identified themes and sub-themes derived from the manuscript of data collected during this research. The themes and sub-themes included: The legal framework of *darar* and its effectiveness in addressing MID as theme one, with major causes of MID and effects of MID as its sub-themes; the scope of MID as theme two; the establishment of MID within Islamic jurisprudence in the Sharia Courts in Kano as theme three; judicial and non-judicial remedies as theme four; and the practical challenges in obtaining judicial remedies, with eight sub-themes namely: lack of awareness of the rights of women by both genders as sub-theme one; lack of awareness among women litigants about the work of a lawyer and poverty among women as sub-theme two; women's natural inability to speak out about their problems as sub-theme three; judges' lack of proper appreciation of the MID concept as sub-theme four; judges' attitude of conservativeness/judicial expertise as sub-theme five; judges' lack of conformity with the framework of the study in determining MID cases as sub-theme six; judges' masculine attitudes/male dominance affecting their decisions in MID cases as sub-theme seven; and lack of judicial activism as sub-theme eight, which are discussed below.

It should be noted in this paper that the interviewees are identified by their callings according to the category they belong to: IJ refers to interviewee judge, IL refers to interviewee lawyer, IPM refers to interviewee policy-maker, ID refers to interviewee psychiatric doctor, IW refers to interviewee woman from a women's group¹, and IV refers to interviewee victim of MID. Five interviewees from each category were numbered 1-5. The paper adopted a phenomenological qualitative research approach in exploring the perspectives and experiences of government officials, such as judges, policymakers, psychiatric doctors, and other private stakeholders like lawyers, women's organizations, and victims of MID, to which the research is limited. Thirty

¹ Five women's groups identified in the research methodology are the Federation of Muslim Women Association of Nigeria, Kano State Chapter (FOMWAN), Jama'atu Nasrul Islam (JNI), Kano State Chapter, Women in Da'awah (WIN), Kano State Chapter, (FIDA), Kano State Chapter, and Sayyidatu wal Adfal Foundation (SWAF), Kano State

interviews (16 face-to-face and 14 on the phone) were conducted, transcribed, and thematically analyzed. The paper found that legal services are not affordable for most litigants due to poverty, and courts are not granting proper remedies because women cannot prove their claims due to the difficulties of the procedures involved. The paper concludes with a lengthy conclusion.

Sinha S., in *Multiple Roles of Working Women & Psychological Well-Being*, explains that marriage and parenthood are associated with women's physical and mental health, and that employed married women tend to have better well-being than those who are unemployed. This is because many wives depend on their husbands for financial maintenance; when such support is not adequately provided, it can negatively affect psychological well-being. Sinha's study (82 employed married women vs. 82 homemakers) shows that working women are more satisfied with life and have higher well-being because their income helps compensate for insufficient maintenance and enhances their status and self-esteem. Similar findings in Lagos, Nigeria, indicate that employed married women tend to have more stable marriages due to better psychological well-being.²

In another article titled "Mental Injury" the research justified the fact that failure of husbands to take financial responsibility of their wives' necessity amounts to a lot of hardship being suffered by the woman which in severe cases leads to mental injury.³ According to Jean, R. S., in "Relationship Dynamics: Understanding Married Women's Mental Health", the research revealed that married women are at the risk of depression and several factors that are responsible for; especially issues of need fulfillment as predictors of married women's psychological well-being. The research also pointed out that multiple regressions demonstrated that a significant proportion of women's well-being was attributable to interdependence in the marriage and the perception that interactional, emotional and sexual needs were being met.⁴

In another article titled "Understanding Happiness and Psychological Well-Being among Married Women in Rural India". The study revealed how factors such as empowerment and financial support will help married rural women attain happiness and gain psychological well-being. Married women

² Olujide, A. A. and 8 Others, "Psychological Well-Being, as a Predictor of Marital Stability among Employed Women in Lagos State, Nigeria," *Journal of educational and social research*, vol. 13(1), 146, 5th January, 2023, www.researchgate.net > Publication, accessed 19th October, 2023 9:50pm

³ (n.a.), "Mental Injury", IOWA department of health and human services (n.p), (2003), hhs.iowa.gov

⁴ Jean, R. S., "Relationship Dynamics: Understanding Married Women's Mental Health", Published by pubmed.ncbi.nlm.nih.gov, www.Nursingcenter.Com > Journal Article, (N.P), (2007)

living in poverty and who are not properly taken care of by their husbands cannot readily have the maximum happiness and well-being needed.⁵

In "Marital Happiness and Marital Stability; Consequence for Well-Being", the research revealed how divorce has a detrimental effect on people's emotional well-being which may differ by marital happiness and how people living in an unhappy marriage's prove their emotional situation upon divorce. It also discloses how negative experiences and emotions can cause distress and lead to a decline in positive emotions and evaluations.⁶

In a similar research, "Comparison of Psychological Well-Being and Marital Burnout and their Dimensions among Employed and Unemployed Women" it was revealed that there is a significant difference between employed and unemployed married women Psychological Well-Being. Working women have higher Psychological Well-Being but the difference in couple burnout was more among homemakers.⁷ Same was revealed by Mousavi, S. F in similar research.⁸

In this article "Marital Happiness and Psychological Well-Being across the Life Course", it was found out that marital quality and psychological well-being were positively related to both, concurrently and overtime such that high level of marital quality were associated with greater individual well-being, they added that marital quality or health depends on marital happiness, marital conflict, marital commitment, social support, marital interaction, marital discord, forgiveness and domestic violence have each been conceptualized as dimension of marital quarantine and are sometimes combined as a single indicator of marital quality.⁹

It can also be understood from the background of this research that Domestic violence and Intimate partner violence has a significant relationship with depression. It is also found that women who were victimized by their partners had higher rates of depression, anxiety and phobias than those who were not victimized. The relationship of domestic violence with mental health problems can be measured by the mental level of those women who were

⁵ Gosh, S., Lahiri, S. & Datta, N., "Understanding Happiness and Psychological Well-Being Among Married Women in Rural India"; Journal Of Comparative Family Studies, (N. P), Vol.49 (1), 2017

⁶ Linda, J. W., Ye Luo, Alisa, C. L., "Marital Happiness and Marital Stability; Consequence for Well-Being", Social Science Research, (N. P) Vol.38, Issue 1, March 2009

⁷ Reza, B. G., Ali, M. N., Farshad, M., "comparison of Psychological Well-Being and marital burnout and their dimensions among employed and unemployed women", (n. p), (n. d), www.jzvj.mardasht.iau.i

⁸ Mousavi, S. F., "Psychological Well-Being, Marital Satisfaction and Parental Burnout in Iranian Parents: The Effect of Home Quarantine During Covid -19 Outbreaks", Department of Psychology, Women Research Centre, Al-Zahra University, Tehran, Iran, (n. p), Vol.11, 3rd December,2020, <https://doi.org/10.3389/fpsyg> 2020.553880

⁹ Claire, M. K. D., Miles G. T., & Rhiannon, A. K., "Marital Happiness and Psychological Well-Being across the Life Course", (N. P), (N. D), www.ncbi.nlm.nih.gov

abused by their intimate partner and who are seeking treatment in mental health clinics. Intimate partner violence according to WHO is any behavior within an intimate relationship that can cause physical, sexual and psychological harm including acts of physical aggression, coercion and psychological abuse and controlling behavior. This has a devastating health and social consequence, which exposed victims to different forms of psychological abuse and mental health problems including depression and depressive symptoms. This has been justified by a lot of recent happenings in different research across the world.

According to an article “Risk Factors for Injury from domestic violence in Married Women in Hongkong”, The research revealed how several significant risk factors have been identified for injury incurred during domestic violence to married women in Hongkong which include among others husband’s unemployment, extramarital affairs, illicit of drug abuse, alcoholic abuse, mental illness and husband’s low educational level. All these factors mentioned are sources of harm (that are not physically) inflicted by the husband against the wife which amount to domestic violence.¹⁰

In a similar research, “Prevalence of Domestic Violence and Associated Depression in Married women at a tertiary care hospital in karachi” through an empirical research, the research showed the prevalence of domestic violence and associated depression among married women presented to the psychiatric setting at a tertiary care hospital to identify associated depression in these married females. The study revealed that most of the women experienced domestic violence in different forms and associated depression, a lot of them were reported to have been enduring more than one form of domestic violence or the other simultaneously and a chunk of them are suffering from depression. It was also found that domestic abuse has a negative relationship with the quality of life of those who have been subjected to domestic violence of any sort.¹¹

In a similar study, “prevalence of Intimate Partner Violence and its associated symptoms of depression; a cross-sectional study based on a female population sample in Sweden”, it explained what constitute Intimate Partner Violence which includes acts of physical aggression, sexual coercion, physical abuse and controlling behaviors, these forms of violence often coexist in the same relationship. The literature shows how women living with Intimate Partner

¹⁰ Tsui, K. L. et al, “*Risk Factors for Injury from Domestic Violence in Married Women Risk Factors for Injury from Domestic Violence in Married Women in Hongkong*”, Hongkong Medical Journal, Published by National Library of Medicine, National Center for Biotechnology Information, 8600 Rockville Pike, Bethesda, Md20894, (August, 2006), pubmed.ncbi.nlm.nih.gov/1691

¹¹ Abul, F., Sobia, H. “*Prevalence of Domestic Violence and Associated Depression in Married women at a tertiary care hospital in karachi*”, (n.p), vol.5, 2010 Gallops (Eds), www.science-direct.com >Article, `

Violence are associated with serious mental health outcomes such as depression and depressive symptoms. The study revealed how analysis of controlling behavior and its association with self-reported symptoms of depression in a female base population sample and exposure to controlling behavior, physical violence by an intimate partner were clearly associated with women's reported symptoms of depression.¹²

In "domestic violence and its relationship with depression, anxiety and quality of life: a hidden dilemma of Pakistani women" the research describes domestic violence and came out with five major types of domestic abuse to which emotional abuse is one of them (after making serious comparison with combination of violent and abusive behaviors). The research revealed that the higher the levels of domestic violence (i.e physical, psychological, and sexual) the lower the mental health in married women who experienced high level of domestic abuse, survived and develop high level of depression, anxiety, post-traumatic stress disorder (PTSD). The research discloses how spousal abuse among Pakistani women has severely influenced their social life, physical and mental well-being, mental state and relationship with other members of family and society. This is because they had undergone a variety of harassment and abuse which includes physical assault, degradation, inhuman neglect, marginalization and poverty.¹³

In a similar vein, in "Mental Health Consequences of Intimate Partner Abuse" The research revealed how battered women are frequently identified with psychological abuse as inflicting greater distress compared to physical acts of violence.¹⁴ In another recent research titled; "stressfulness of daily social roles for women and psychological well-being", it tried to relate the relationship between stressful life event and the negative impact it has on psychological well-being which at the end of the day cause poor mental health.¹⁵ In "A Comparison of Intimate Partner Violence and its Association with Depression" The article was able to assess the prevalence of exposure to

¹² Solveig, L., Jesper, L., Gunilla, K. & Marjan, V., "prevalence of intimate partner violence and its associated symptoms of depression; a cross-sectional study based on a female population sample in Sweden", (n. p), (BMC public health 17), article number 335, 20th April, 2017, bmcpublihealth.biomedcentral.com

¹³ Mazhar, M., Nargis, M., M. Usman, G., & Nasir, A., "domestic violence and its relationship with depression, anxiety and quality of life: a hidden dilemma of pakistani women", Pakistan journal of medical sciences- bi-monthly, pakj.medsci., (n. p), January-february 37(1), 202, doi:10.12669/pjms.37.1.2893, PMID:PMC779441451PMID:33437275

¹⁴ Mechanic, M. B., Weaver, T. L., Rassic, P.A., "Mental Health Consequences of Intimate Partner Abuse", violenceagainstwomen; Author Manuscript Available In PMC 2010, November 1st, Publish In Final Edited Form As: [Violenceagainstwomen2008.Jun;14\(6\):634-654](http://Violenceagainstwomen2008.Jun;14(6):634-654), Doi:10.1177/1077801208319283, PMID: PMC2967430/NIHMSID, NIHMSID2458021PMID:18535306

¹⁵ N.a "stressfulness of daily social roles for women and psychological well-being", www.jstor.org >stable (n;p), (n.d)

intimate partner violence in terms of controlling behavior, sexual and physical violence and its association with self-reported symptoms of depression in a female population-based sample in Sweden and its association with depression. The study revealed that physical abuse including controlling behavior is far more frequent than other forms of Intimate Partner Violence and that most women exposed to physical Intimate Partner Violence are also exposed to some form of psychological abuse and mental health problems including depression and depressive symptoms.¹⁶

According to this study, "Intimate Partner Violence Against Adult Women and its Association with Major Depressive Disorder, Depressive Symptoms and Post-Partum Depression: Systematic Review and Meta-Analysis", The research revealed that Intimate Partner Violence is associated with a wide range of short-term and long-term physical and mental health sequel. It added that there is a strong positive association between Intimate Partner Violence and depression, and that women exposed to Intimate Partner Violence suffer a lot of physical and mental injuries to which post-traumatic stress disorder, anxiety, depression and suicidal thoughts are part of.¹⁷

In a similar research, "Cross- Cultural Difference in Intimate Partner Violence and Depression: A Systematic Review", The study shows that Intimate Partner Violence has no respect for culture, status and religion, it maintained that all women around worldwide suffer from it, women who experience Intimate Partner Violence and each cultural group may have factors intrinsic to its group that influence the prevalence and effects of Intimate Partner Violence, However, there are common factors that permeate all cultural groups which include migration, help seeking behavior and the tolerance of Intimate Partner Violence due to a complex range of culture-specific, social and legal reasoning. The study shows that Intimate Partner Violence has serious mental health consequence such as depression, since the perpetrator's power causes severe effects on the victim such as intimidation, fear or injury. Economic /financial abuse according to the literature is another form of Intimate Partner Violence because it involves the abuser controlling their partners finance in order to prevent them from accessing resources, working, being self-sufficient and independent and to ensure that the victim cannot leave the perpetrator

¹⁶ N.a, "A Comparison of Intimate Partner Violence and Its Association with depression", , publichealth.biomedcentral.com, d-nb.info, (n;p), (n.d)

¹⁷ Beydoun, H.A., Beydoun, M. A., Kaufmann, J.S., Lo, B., Zonderman, A.B., "Intimate Partner Violence Against Adult Women and its Association with Major Depressive Disorder, Depressive Symptoms and Post-Partum Depression: Systematic Review and Meta-Analysis", *Journal of Social Science and Medicine*, Vol.75, Issue 6, Published Online, September, 2012, Pg 959-975. Available in PMC2013, published in final edited form as; [socscimed.2012sep;75\(6\):959-975](http://socscimed.2012sep;75(6):959-975), PMID: PMC3537499/NIHMSID: or NIHMS421370/PMID:2269499, accessed on 3rd November 2023 @ 3:18am

due to the former being financially being dependent and isolated from the wider community.¹⁸

Research Methodology

Being qualitative, this study employed the purposive sampling technique for the identification and selection of the research participants. In so doing, persons involved in the judiciary and relevant stakeholders were selected. In fact, the ultimate impact of the research sample on the research findings necessitated the selection of judicial officers and other participants with the rich experience around women's right promotion and protection. The thirty participants were, therefore, drawn from judiciary, lawyers, policy makers of the state, psychiatric doctors, women groups and victims of incorporeal injury. Overall, the participants were selected because they have the relevant experience and information and are "potential sources of rich data"¹⁹ on the phenomenon of the research. The relevant information and experience of the participants assisted in the realization of the research objectives. This study aims at a deeper understanding of the experience of the stakeholders in the promotion and protecting women's rights in matrimony. It is, therefore, phenomenological. According Patton, a phenomenological study is one that "aims at gaining deeper understanding of the nature or meaning of our everyday experiences." Patton argues that if researchers are to achieve deeper understandings they need to gather data and must "undertake in-depth interview with people who have directly or indirectly experienced the phenomenon of interest; that is, they have lived experience as opposed to secondhand experience,". Based on Patton's recommendation, in-depth semi-structured interviews were conducted face-to-face and virtual by the author with the thirty participants using an open-ended question format within the interpretivist paradigm.²⁰ According to Mason the interpretivist approach "... sees people as a primary data source" and also "seeks their perceptions ... the 'insider view', rather than imposing an 'outsider view.'" The interpretivist approach enabled the researchers to understand the experiences of the judiciary and relevant stakeholders and how best to solve the challenges of obtaining judicial remedy. The flexibility of the semi-structured interview enabled the author to observe and capture the real challenges faced by the

¹⁸White, M.E., Satyen, L., "Cross- Cultural Difference in Intimate Partner Violence and Depression: A Systematic Review", Aggression and Violent Behaviour Journal Published By Elsevier Limited, September-October, 2015, available at <https://doi.org/10.1016/j.avb.2015.05.005>, www.sciencedirect.com accessed on 3rd November, 2023 @ 3:10am

¹⁹ Drew, H. (2014). Overcoming Barriers: Qualitative Interviews with German Elites. *The Electronic Journal of Business Research Methods*, 12, p. 77.

²⁰ Patton, M. Q. (2002). Designing qualitative studies. *Qualitative research and evaluation methods*, 3, 230-246.

litigants, lawyers and women organization in the protection of women's right in matrimony.²¹

The in-depth, semi-structured interviews were conducted within 2 months (November 2024- January 2025). Sixteen of the interviews were conducted at the participants' offices while the remaining fourteen were conducted virtually. The duration of the interviews lasted between thirty minutes to one- hour period. Some of the interview questions include "what is your understanding about the Islamic legal framework of *darar*?" "what are the challenges involved in the establishment of MID in the *Shari'a*?" The Interviews were audiotaped and transcribed by the author who conducted the interviews. For evidential purposes, validation and in support of the research findings, data excerpts from the transcribed responses on the main and sub-themes of the research are included.²²

Interview text editing could either be "standardized or preservationist,". The "standardized" as opposed to the "preservationist" approach to text editing, was adopted in the analysis of the transcribed data. Distracting elements, and colloquial and spoken words such as "aaam," "waooh," "hmm" "ehnn" "well" "you know" "you understand" "eeehh" were excluded in the relevant excerpts from the interviews.²³ Benner's Interpretive Phenomenological (BIP) tradition is adopted in this research. The adoption of BIP is justified because of its' emphasizes on exploring the everyday human practical experience and knowledge. BIP assists the researcher to explore the participants everyday practical experience and knowledge on the challenges of obtaining judicial remedy. In conducting the analysis, the thematic approach of themes identification with enough excerpts support as advocated by Benner was adopted.²⁴ The adoption of the thematic analytical approach was justified because according to Gill²⁵, it "necessitates creativity and imagination." The practical challenges in obtaining judicial remedy theme were used as the main theme with several other emerging sub-themes. For credibility purposes, the in-depth interviews and other raw data were accurately transcribed and documented by the corresponding author. The authors scrutinized the main theme and the emerging sub-themes from the transcribed data before the

²¹ Mason, J. (2002). *Qualitative researching*. Sage.

²² Sandelowski, M. (1994). Focus on qualitative methods. The use of quotes in qualitative research. *Research in Nursing & Health*, 17(6), 479-482. <http://dx.doi.org/10.1002/nur.4770170611>, Hatch, J. A. (2002). *Doing qualitative research in education settings*. SUNY Press.

²³ Sandelowski, M. (1994). Focus on qualitative methods. The use of quotes in qualitative research. *Research in Nursing & Health*, 17(6), 479-482. <http://dx.doi.org/10.1002/nur.4770170611>

²⁴ Benner, P. (1994). *Interpretive phenomenology: Embodiment, caring, and ethics in health and illness*. Sage Publications.

²⁵ Gill, M. J. (2014). The possibilities of phenomenology for organizational research. *Organizational Research Methods*. <http://dx.doi.org/10.1177/1094428113518348>

production of the research findings. For a more rigorous analysis and to make the research findings more plausible, the collected data was triangulated using data sourced from scholarly works, institutional and government documents.²⁶ To guarantee transparency and dependability of the data collection, this study conducted an audit trail. This is to ensure that the researcher would make similar observations of the data.²⁷ The research approach is qualitative. It is exploratory and descriptive. The choice of the approach is justified as it enables the researcher gain in-depth understanding of the perspectives of stakeholders on the phenomenon of research²⁸ The researcher had an in-depth understanding of the justice delivery system as it relates to obtaining judicial remedy from the participants' world-views. To ensure variation in the participants' experience and perspective on the phenomena of the research, the study was conducted with the relevant stakeholders involved in and outside the judiciary.

The study employed the purposive sampling technique in recruiting thirty participants. The choice of the participants was limited to individuals with the needed information to meet the research objectives as recommended by scholars.²⁹ These include staff of the judiciary, lawyers, policy makers, women group, psychiatric doctors and victims of MID. For ethical reasons, the participants' consent to participate in the research and to be audio taped was sought before commencement of the interview. Participants were guaranteed the confidentiality of their details and the freedom to withdraw their consent at any stage of the interview.

Data Collection and Management

The individual face-to-face/virtual in-depth interview was the data collection method. The semi-structured interview (SSI) pattern was utilized. The SSI was adopted because it is flexible and enables the researcher to formulate sets of pre-determined questions in advance and probing techniques employed based on the participant's responses³⁰. The participants' convenience determined the scheduling of the interviews. The interviews lasted between thirty minutes to one hour. The interviews focused on

²⁶ Merriam, S. B. (2014). *Qualitative research: A guide to design and implementation*. John Wiley & Sons.

²⁷ Patton, M. Q. (2002). Designing qualitative studies. *Qualitative research and evaluation methods*, 3, 230-246.

²⁸ Schurink, W., Fouché, C. B., De Vos, A. S., Strydom, H., & Delport, C. S. L. (2011). *Research at Grass Roots: For the Social Sciences and Human Service Professions*. Pretoria: Van Schaik.

²⁹ Drew, H. (2014). Overcoming Barriers: Qualitative Interviews with German Elites. *The Electronic Journal of Business Research Methods*, 12, 77-86. And Neuman, W. L., & Robson, K. (2004). *Basics of Social Research*. Upper Saddle River, NJ: Pearson. OFT (1991). *Annual Report of the Director General of Fair Trading*. London: OFT.

³⁰ Gray, D. E. (2004). *Doing Research in the Real World*. Thousand Oaks, CA: Sage.

examining the effectiveness of the *Islamic* legal framework of *darar* and the practical challenges in obtaining judicial remedy. To this end, participants were told that no answers to questions asked were right or wrong. Guiding questions included: "How do you assess judicial remedy in cases of MID?" "In your opinion what are the challenges in obtaining judicial remedy?" There were series of follow-up questions arising from the initial questions and the participants' responses. During the interviews, there was more of listening and probing, and clarification offered (where necessary) to ensure participants' understanding.³¹ The interviews were partly in English, recorded and transcribed verbatim by the author for those who can communicate very well in English. While for the interview conducted in Hausa language, it was first translated. To avoid loss and for confidentiality purposes, the transcribed data were saved on a flash drive and other secure places. The transcripts were later printed for ease of analysis.

Data Analysis

The data analysis as suggested by scholars such as Rapley, and Maxwell was conducted concurrently with the data collection. The data was manually managed, and its analysis thematically conducted.³² The value and theoretical flexibility of the thematic analysis (TMA) justified its adoption.³³ TMA involves searching important themes from the data to explain the research phenomenon.³⁴ According to some scholars,³⁵ TMA "provides a flexible and useful tool, which can potentially provide a rich and detailed, yet complex account of data". In fact, TMA is considered as the foundation of all qualitative data analysis methods. Through the TMA, this study identified and reported the perception, understandings and experience of the participants in the form

³¹ Schurink, W., Fouché, C. B., De Vos, A. S., Strydom, H., & Delport, C. S. L. (2011). *Research at Grass Roots: For the Social Sciences and Human Service Professions*. Pretoria: Van Schaik.

³² Maxwell, J. A. (2005). *Qualitative Research Design: An Interactive Approach: An Interactive Approach* (Vol. 41). Thousand Oaks, CA: Sage., Rapley, T. (2004). Interview. In C. Seale, G. Gobo, J. F. Guardium, & D. Silverman (Eds.), *Qualitative Research Practice*. London: Sage Publications.

³³ Braun, V., & Clarke, V. (2006). Using Thematic Analysis in Psychology. *Qualitative Research in Psychology*, 3, 77-101. <http://dx.doi.org/10.1191/1478088706qp063oa> And Clarke, V., & Braun, V. (2013). Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning. *The Psychologist*, 26, 120-123.

³⁴ Fereday, J., & Muir-Cochrane, E. (2008). Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development. *International Journal of Qualitative Methods*, 5, 80-92., Daly, J., Kellehear, A., & Gliksman, M. (1997). *The Public Health Researcher: A Methodological Approach*. Melbourne: Oxford University Press., Clarke, V., & Braun, V. (2013). Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning. *The Psychologist*, 26, 120-123.

³⁵ Braun and Clarke (2006), p. 78

of themes and sub-themes. The analysis followed Braun and Clarke's (2006) six phases of thematic analysis:³⁶

Table 1. Braun and Clarke's Six Phases of Qualitative Analysis

No.	Phases	Description
1	Familiarizing yourself with your data	Transcribing data (if necessary), reading and rereading the data, noting down initial ideas.
2	Generating Initial Codes	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3	Searching for Themes	Collating codes into potential themes, gathering all data relevant to each potential theme.
4	Reviewing themes	Checking in the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic "map" of the analysis.
5	Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6	Producing the report:	The final opportunity for analysis. Selection of vivid, compelling examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

The reading of the interview transcripts was recursive. The study employed an inductive approach as such the transcripts were carefully and repeatedly read to gain deeper and overall appreciation of the phenomenon jotting down the themes emerging from the participants' responses.³⁷ This process enabled the researcher to gain deeper understanding of the research participants' world. In other words, the data was coded and categorized, and themes and sub-themes developed. Five major themes were developed. Sub-themes for these themes were identified from the data and presented in the results section. To ensure that the themes and sub-themes deduced from the interview were properly categorized and accurately represent the exact experience and perspectives of the participants, the researcher cross-checked and compared the themes from the listening of the audio and a thorough reading of the printed copies. For transparency and emphasis, direct quotes from the Participants' responses were included in the analysis.

³⁶ *Ibid*, p.79

³⁷ Rice, P. L., & Ezzy, D. (1999). *Qualitative Research Methods: A Health Focus*. Melbourne: Oxford University Press.

Results

The qualitative analysis resulted in several categories of challenges of obtaining judicial remedy in cases of MID. These include lack of general awareness of women's *Islamic* right, judge's lack of proper appreciation of MID concept, judge's attitude of conservativeness /judicial expertise, judge's lack of conformity with the framework of the study in determining MID cases, Judge's manly attitude/ male dominance affect their decision in MID cases, and lack of judicial activism. However, the lack of awareness of general women's Islamic right, judge's lack of proper appreciation of MID concept, judge's attitude of conservativeness /judicial expertise and difficulty of proving claims in MID cases were more striking, and all the participants were unanimous that it constitutes the major challenge for obtaining judicial remedy. In the same direction, all the participants were unanimous on the effectiveness of the Islamic legal framework as there is vast knowledge and understanding on it and about the judge's lack of proper appreciation of MID concept, and lastly about the wrong application of *Khul'i* remedy, no such unanimity was found on other sub-themes. The main themes and the sub-themes are examined below.

The Legal Framework of *Darar* and Its Effectiveness in Addressing MID

The discussions/question on the legal framework and its effectiveness covers areas bordering around its definition, sources, elements, application. All the interviewees exhibited excellent knowledge and good understanding of the legal framework of *darar* under *Islamic* law and its effectiveness if the challenges mentioned below are absent. Almost all the interviewees especially judges, lawyers and some doctors agree that MID is an emotional injury that cannot be seen. Prominent among these definitions is the response of IJ-1³⁸ who defines it as "anything that is harmful to women whether physical, verbal or emotional no matter small is against *Shari'a* because *Islam* says 'la darara wala dirara.'" ³⁹ ID-4⁴⁰ said "as a *Muslim*, I have a foundation from elementary studies that 'la darara wala dirara'. The prophet also said; the blood and the human being is sacred, and no one is expected to be harmed by one another⁴¹. Lastly injury can be emotional, economical and moral." IPM-1⁴² also maintained that "the prophet's last sermon was on taking care of women, which means that you

³⁸ Virtual Interview with Interviewee Jugde 1 Upper Shariah Court kasuwa, sitting at Shahuci, Kano, on December 14, 2024, @ 5pm-6pm.

³⁹ Ibn Majah, M.Y., "Sunan ibn Majah", Dar Al-Kutub Al-Ilmiyyah, (1999), Hadith No. 10

⁴⁰ Virtual Interview with Interviewee resident psychiatric doctor 4, Aminu Kano teaching hospital. Kano, on January 8, 2025, @ 12pm-1pm.

⁴¹ Sahih Bukhari, Hadith No. 7078

⁴² Interview with Interviewee policy-maker 1, director citizens right, ministry of justice, Kano, on December 31st, 2024, @ 11am-12pm.

cannot harm them, they should be handled with care” IW-1⁴³ said there are numerous verses and prophetic traditions that prohibits violence especially in marriage where Allah is the only witness, in fact the holy prophet (P.B.U.H) in his last sermon strictly prohibit violence of whatever form. IJ-2⁴⁴ define harm in matrimony as “any unfavorable condition both seen and unseen”

Major Causes of MID

A lot of researches around the globe revealed that women lacking maintenance and proper health care due to the husband's lack of employment or poverty (whether honestly or mischievously), women who suffer maltreatment, sexual deprivation/starvation/abandonment, women who suffer from husband's controlling behavior, domestic violence/intimate partner violence/gender-based violence, husband's cruelty, verbal abuse, women who are denied the right to be employed or do any earning and the like by their husbands are susceptible to negative psychological well-being, trauma, depression, anxiety and mental ill-health. Some of these researches to this effect are: Sinha S. in “Multiple Roles of Working Women & Psychological Well-Being”, Olujide, A. A. and 8 Others, in “Psychological Well-Being, as a Predictor of Marital Stability among Employed Women in Lagos State, Nigeria,” (n.a.), in “Mental Injury”, Reza, B. G., Ali, M. N., & Farshad, M., in “Comparison of Psychological Well-Being and Marital Burnout and their Dimensions among Employed and Unemployed Women”, Mousavi, S. F., in “Psychological Well-Being, Marital Satisfaction and Parental Burnout in Iranian Parents: The Effect of Home Quarantine During Covid -19 Outbreaks”, Tsui, K. L. et al, in “Risk Factors for Injury from domestic violence in Married Women in Hongkong”, Abul, F., Sobia, H. in “prevalence of Intimate Partner Violence and its associated symptoms of depression; a cross-sectional study based on a female population sample in Sweden”, Solveig, L., Jesper, L., Gunilla, K. & Marjan,.V, in “prevalence of Intimate Partner Violence and its associated symptoms of depression; a cross-sectional study based on a female population sample in Sweden”, Mazhar, M., Nargis, M., M. Usman, G., & Nasir, A., in “Domestic violence and its relationship with depression, anxiety and quality of life: a hidden dilemma of Pakistani women”, and (n.a), “A Comparison of Intimate Partner Violence and Its Association with depression.”⁴⁵

⁴³ Virtual Interview with Interviewee women group 1, secretary, women in da'awah, Kano state chapter, on December 15th, 2024, @ 7pm-8pm.

⁴⁴ Virtual Interview with Interviewee Judge 2 Shariah Court sitting at Sitti, Kano, on December 16th, 2024, @ 8pm-9pm.

⁴⁵ All these researches mentioned under the headings: major causes of MID, effect of MID and scope of MID below have all been fully cited and referenced under literature review above.

This empirical study justifies the assertion made by these researches since all the interviewees were able to respond positively to this question and were able to bring out one or two causes like what other researchers have found. Precisely, ID-1⁴⁶ said “stress is a major cause which women may be exposed to depress, stress associated with deep anxiety especially without a supporting system of family. This will cause her trauma and her family will be jeopardized” IL-5⁴⁷ said “if you understand the psychology of women, issues like sexual abandonment, it can make her do the worst things in her dealings, interactions and socialization” IPM-2⁴⁸ said: “an injury is better physical than it is non-physical like verbal or humiliation-personally I hate humiliating women should avoid beating women because the prophet (P.B.U.H) never practice it.”⁴⁹ This shows how acquainted people are with this kind of injury.

Effects of MID on Victims

The interviewees are generally of the opinion that this kind of injury has a serious negative and long-lasting effect on the victims such as stress in the marital home, distress, anxiety, depressions, trauma and the like. This is justified by various researches conducted around the globe such as: Jean, R. S., in “Relationship Dynamics: Understanding Married Women’s Mental Health”, Linda, J. W., Ye Luo, Alisa, C. L., in “Marital Happiness and Marital Stability; Consequence for Well-Being”, (n.a), “stressfulness of daily social roles for women and psychological well-being”, Mechanic, M. B., Weaver, T. L., Rassic, P.A., in “Mental Health Consequences of Intimate Partner Abuse”, Beydoun, H.A., Beydoun, M. A., Kaufmann, J.S., Lo, B., Zonderman, A.B., in “Intimate Partner Violence Against Adult Women and its Association with Major Depressive Disorder, Depressive Symptoms and Post-Partum Depression: Systematic Review and Meta-Analysis”, White, M.E., Satyen, L., in “Cross- Cultural Difference in Intimate Partner Violence and Depression: A Systematic Review”. Most of the interviewees express their concerns on the negative effect of MID on the victim and the family there by mentioning circumstances that lead to the different kind of injuries. This kind of injury as recognized by the interviewees deserve courts recognition and compensation. ID-5⁵⁰ a psychiatric doctor while emphasizing the effect of incorporeal injury said that “it is obsolete to think that injury is only when you see blood and inflammation, it is beyond that.

⁴⁶ Interview with Interviewee psychiatric doctor 1, Aminu Kano teaching hospital. Kano, on December 12th, 2025, @ 12pm-1pm.

⁴⁷ Interview with Interviewee lawyer 5, A. M Bello & co, no. 56 court road, Kano, on December 30th, 2024, @ 4pm- 5pm.

⁴⁸ Interview with Interviewee policy-maker 2, Honorable commissioner religious affairs, Ministry of religious affairs, Kano, on January 7th, 2024, @ 5:45pm-6:30pm.

⁴⁹ Sahih Muslim, no. 2328 a

⁵⁰ Interview with Interviewee consultant psychiatric doctor 5, Aminu Kano teaching hospital. Kano, on December 20th, 2025, @ 12pm-1pm.

Thus, unseen injury what we term as a mental scar' can limit the quality of the thinking of individual and influence negative decisions like suicidal though, it is worse than physical injury. The judiciary should therefore provide better and adequate damages for victims". The response of IL-5⁵¹ is not also different. The Interviewee emphasized that: "marriage is not designed to be abusive, so harm is not accepted in Islam no matter what". In the same direction, IJ-2⁵² said: "injuries like verbal abuse, harassment and humiliation suffered by a wife from her husband, others like spiritual violence when it accumulates can make her suffer from depression.

The Scope of MID

The discussion/question on the scope of MID theme cover areas bothering around defining the scope of MID, types of MID, circumstances leading to MID, the impact it has on the spouses, children and society at large. This study pointed out that the scope of MID covers anything that hinders marital happiness, negate psychological well-being of a woman in the marital home and causes marital burnout. To sum it all, for any marriage to serve its purpose in *Shari'a* it must improve the marital and mental quality of a woman, the researchers by necessary implication maintained that the happiness sustained with a high-level marital quality is directly proportional to the mental quality and psychological well-being of a wife. In other words, marital quality and happiness is directly associated with the greater individual's well-being and mental health.

Research like: Gosh, S., Lahiri, S. & Datta, N. in "Understanding Happiness and Psychological Well-Being among Married Women in Rural India" and Claire, M. K. D., Miles G. T., & Rhiannon, A. K., in "Marital Happiness and Psychological Well-Being across the Life Course" justifies the empirical studies conducted in this paper. According to IPM-3⁵³ while discussing the scope of MID said: "MID is anything that hinders the improvement of women and children's welfare and happiness. He added that in kano in relation to this type of injury, the emir proposed a law to curtail this injury in matrimony because lots of marriages are broken for want of maintenance, good maternal health care, good living condition, suffering in the hands of cruel men and whenever they approached the court their case will either be stoked out or forced to accept *Khul'i* remedy for lack of evidence to prove her case. This is because this injury cannot be seen even the judges neglect them and forget its existence and fail to award damages or compensation. When a woman reports to her parents, the parents think she is just being stubborn and simply want to exit matrimony for flimsy reasons. These are just borne by attitude of the husband when he fails to

⁵¹Cited supra, n.48

⁵² Cited supra, n.45

⁵³ Interview with Interviewee policy-maker 3, chairman, law reform commission, Kano State, on January 8th, 2024, @ 11am-12pm.

shoulder his responsibilities either honestly or mischievously and exhibit cruelty either verbally or by acts or decide to beat or sexually abandoned her.

The effect of this on the woman is that she suffers serious depression, trauma and negative psychological well-being which makes her unable to discharge her duties well as a wife and a mother". Reiterating this, IJ-1⁵⁴ said: "it covers non-physical act like refusing to have sexual intimacy with one's wife and lack of maintenance or anything against the rule and regulation of marriage which will make her miserable and unhappy". In the same direction, IW-3⁵⁵, IL-3⁵⁶, and IW-4⁵⁷ particularly said: issues like lack of maintenance, neglect on health care, husband's cruelty and beating one's wife makes a woman lose interest in the marriage completely". ID-1⁵⁸ when expressing his knowledge on MID he said in relation to its circumstances that; "Islamically, we know it is not proper to hurt and cause trouble to anyone, we don't really address marriage issues directly. However, when we trace history and if found out that it is linked to family/marriage then we need to talk to the victim's husband especially when diagnosed with depression, anxiety and negative psychological well-being, we also talk to family of victim to shoulder responsibility of taking care of their loved ones". IW-1⁵⁹ regarding the circumstance leading to MID said: "women are always cheated because men don't accept correction culturally and the feelings of a woman are not being respected by men.

Traditionally, women are expected to be illiterate, poor and have no decision making or choice, she must accept the behavior of her husband whether good or bad. If she is opportune by Allah to have a man with good behavior she will be happy else she will have to remain unhappy in that marriage, especially when it comes to sexual satisfaction, the man will never respect her concern and she will end up being depressed and unhappy. She would not be able to do anything about it because he will not accept his mistake." IL-2⁶⁰ said: "when a husband fails to uphold the trust placed on him by Allah then he is said to violate or harm his wife, harming her means negating her right to peaceful enjoyment of the marriage which is against the teachings of Islam."

⁵⁴ Cited supra, n.31

⁵⁵ Virtual Interview with Interviewee women group 3, Chairperson federation of female lawyers (FIDA), Kano State chapter, No. 1 Inuwar Jama'ar Kano, Lawan Dambazau road, Kano, on December 20th, 2024, @ 2pm- 3pm.

⁵⁶ Virtual Interview with Interviewee lawyer 3, Chairperson federation of female lawyers (FIDA), Kano State chapter, No. 1 Inuwar Jama'ar Kano, Lawan Dambazau road, Kano, on December 20th, 2024, @ 2pm- 3pm.

⁵⁷ Virtual Interview with Interviewee women group 4, Jama'atu nasrul Islam, Kano state chapter, on December 25th, 2025, @ 10am-11am.

⁵⁸ Cited supra, n.47

⁵⁹ Cited supra, n.44

⁶⁰ Virtual Interview with Interviewee lawyer 2, Faruk, Danbaito, Darma & co, No.3 Zaria Road, Kano, on December 12th, 2024, @ 4pm- 5pm.

The establishment of MID within the Islamic jurisprudence in the Shari'a Courts in Kano

The discussion on this theme cover areas bordering around the evidential requirement, difficulty in getting and meeting up with the procedural requirement and considering the compatibility of the procedure with the principles as contained in the framework of the research as a necessary tool for justifying the flaws in the judicial sector. The empirical aspect of this study confirms the doctrinal aspect under chapter five on how difficult it is to establish the cases of MID due to the cumbersome procedure as seen in the judicial authorities reviewed. The interviewees corroborate what was revealed in the previous chapter (doctrinal) about the cumbersome and unfriendly procedure, the nature of the proceedings and how the judges ignore this injury talk less of compensating them and how a lot of women lose their cases due to these attitudes. Thus; IL-1⁶¹ said "because these injuries are emotional and cannot be seen, so gathering evidence is very difficult." IJ-1⁶² said: "it requires two witness in the absence of which you strike out a case, but there are other exceptions which judges don't care to apply....." Strengthening the matter, IJ-2⁶³, IJ-3⁶⁴ and IL-2⁶⁵ rightly pointed out that it is difficult because it happens out of sight. IPM-3⁶⁶ said: "the issue of burden of proof is not encouraging at all, almost all women lose their cases because they can't provide evidence on them, while things in matrimony happens out of sight and almost renders women's ability worthless to get evidence to ascertain their claims. I think at this juncture; Sharia Court judges must do something to remedy injury for women and avoid unnecessary grant /application of *Khul'i* remedy." IPM-4⁶⁷ lamented that: "because of the difficulty of proving these kinds of injury, honestly we need to relax this evidential procedure and embrace modern times evidence used in science and technology" IJ-5⁶⁸ said: "because of this difficult procedure, both lawyers and judges including victims are not happy, comfortable and satisfied about it. It is my opinion that sooner or later cases on MID will no longer be filed, cases will only be filed for *Khul'i* which is much easier to get relief and remove the woman from harm."

⁶¹ *Ibid.*

⁶² Cited supra, n.31

⁶³ Cited supra, n.45

⁶⁴ Virtual Interview with Interviewee Judge 3, Upper Shariah Court, Provision 1, sitting at Yankaba, Kano State, on December 20th, 2024, @ 8pm-9pm.

⁶⁵ Cited supra, n.61

⁶⁶ Cited supra, n.54

⁶⁷ Interview with Interviewee policy-maker 3, Attorney general/Commissioner of justice, Ministry of justice, Kano State, on January 21st, 2025, @12pm-1pm.

⁶⁸ Interview with Interviewee Judge 5, Shariah Court of appeal, Kano State division, on November 11th, 2024, @ 2pm-3pm.

Judicial and Non- Judicial Remedies

The theme centered around the adequacy or otherwise of the court ordered remedies compared to remedies under Islamic law. Other respondents also suggest non- judicial remedies as discussed below.

Judicial Remedy

Wrong application of *Khul'i* remedy by judges. The interviewees narrated about the cumbersome and unfriendly procedure, the nature of the proceedings and how the judges ignore this injury talk less of compensating them and how a lot of women lose their cases due to this attitude. Worst of all is the wrong award of *Khul'i* which not only fail to solve the problem, but it creates additional hardship of paying back her dowry and more and the injury is ignored. Nobody will talk about this anymore whereas the victim continues to suffer from its long-lasting effect and the husband stand the chance of losing nothing. *Islam* is against this totally. Almost all the respondents are against this court ordered /judicial remedy of *Khul'i* which are not intendem with the principles of *Islamic* law of right protection, removal of harm and aims of *Shari'a*. A prominent research in kano that criticize the *Khul'i* remedy and shows the extent of how it brings about additional hardship and suffering to the wife because of her inability to prove her case, and how the injury is being ignored by the judges was corroborated by the findings of this empirical study under this sub-theme. This research is no other than the PhD research conducted by the Emir of Kano Sunusi Lamido Sunusi⁶⁹ which justify the lack of suitability of this kind of remedy. Some of the prominent responses include the assertion made by IJ-4⁷⁰ who said: "..... must judges ignore their powers and apply wrong remedy or allow the case to slip off their hands." IPM-3⁷¹ said "..... I think at this juncture *Shari'a* Court judges must do something to remedy injury for women and avoid unnecessary grant/application of *Khul'i* remedy." IL-3⁷², IL-2⁷³ and IL-5⁷⁴ all argued that granting *Khul'i* as a remedy to an injured woman in matrimony is very wrong. IJ-4⁷⁵ added strongly that "I swear to Allah *Khul'i* as a remedy is wrongly granted. As an appeal judge, I always quash such decisions whenever they come before me on *darar* cases."

⁶⁹ Sanusi, S. L., "Codification of Islamic Family an Instrument of Social Reform: A Case Study of the Emirate of Kano and Comparison with the Kingdom of Morocco", PhD Thesis (Unpublished), School of Law, SOAS, University of London, (2024), P. 98-99, Doi. <https://doi.org/10.25501/SOAS.00042454>

⁷⁰ Interview with Interviewee Judge 4, Shariah Court sitting at Falgore, Kano State, on December 25th, 2024, @ 11am-12pm.

⁷¹ Cited supra, n.54

⁷² Cited supra, n.57

⁷³ Cited supra, n.61

⁷⁴ Cited supra, n.48

⁷⁵ Cited supra, n.71

Non-Judicial- Remedies

A lot of non-judicial remedies were suggested. According to IW-4⁷⁶, and IW-1⁷⁷ they maintained they do empower, support and counsel women victims, but for men we only refer them to '*wa'az wal Irshad at hisbah*. Empowerment is a key to women's happiness and well-being" IW-2⁷⁸ added that "as women preachers we should continue to be extra patient and preach the exact teachings of *Islam* on marriage to change the narrative. So, men should be taught also how to financially cater for their families." IL-4⁷⁹ said "mediation for couples should be highly encouraged" IW-2⁸⁰ said that Islamiyah schools should be another avenue of educating woman on their rights, while IJ-2⁸¹, IJ-4⁸² and IW-3⁸³ added "women organization not male religious leaders should be used for enlightenment, I mean because of their rigidity and conservativeness." ID-1⁸⁴ said victims of MID needs to be taken out of abusive marriage be it judicially or not. Victims of such injury need to see social workers for counselling. Women should avoid being stressed at all cost." IPM-3⁸⁵ said that "religious leaders need to tighten their belts in preaching the goods about marriage and tell men the need to protect women from violence." ID-5⁸⁶ said; "government should create more policy to cater for this injury, if they exist, they need to be reviewed"

The practical Challenges In Obtaining Judicial Remedies

This theme covers general challenges such as lack of awareness, about the *Shari'a* principles of protection of victims, inability of victims to speak-out their claims out of shyness, poverty and inability to hire the services of a legal practitioner, ignorance on the Islamic principles of marriage by both genders. And on the side of the judges, challenges include lack of judge's appreciation of MID concept, lack of judicial activism, male dominance and lack of conformity of judicial decisions with the framework of the study to mention but a few.

⁷⁶ Cited supra, n.58

⁷⁷ Cited supra, n.44

⁷⁸ Virtual Interview with Interviewee women group 3, Former Amira, Federation of Muslim Women Association (FOMWAN), Kano State chapter and Executive Director of Concerned Mothers Association, Kano State, No. 65. Masallacin Murtala road, Kano, on November 15th, 2024, @ 4pm- 5pm.

⁷⁹ Virtual Interview with Interviewee lawyer 4, Umar Yusuf Khalil & co, No. 53 Ibrahim Taiwo Road, Kano, on December 22nd, 2024, @ 5pm- 6pm.

⁸⁰ Cited supra, n.79

⁸¹ Cited supra, n.45

⁸² Cited supra, n.71

⁸³ Cited supra, n.56

⁸⁴ Cited supra, n.47

⁸⁵ Cited supra, n.54

⁸⁶ Cited supra, n.51

Lack Of Awareness Of *Islamic* Rights In Marriage By Both Genders

Lack of awareness is a general problem for both the male and female genders when it comes to prosecution of MID cases. In relation to this, women awareness of Islamic rights in marriage reduces the chances of right abuse or violation by husbands on the one hand. Information on the rights of women in matrimony and the existing avenues for protection provided by *Shari'a* is valuable and indispensable as a strategy for protecting same. In this study, the interviewees reported lack of awareness as a major bottle neck for protecting women in matrimony. From the analysis, the interviewees responses on the sub-theme (lack of awareness of Islamic rights in marriage by both male and female genders), other sub-themes emerged which includes conservativeness of judges, judge's lack appreciation on the concept of MID, manly attitudes of judges, inability of judges to utilize their powers to mention but a few. When women appreciate their rights, it helps immensely in their protection. When they are not aware they have a right, they obviously cannot demand for it. Therefore, women awareness of their rights is the first step towards addressing their issues and asserting it.

However, the interviewees reported lack of knowledge of this right and awareness as a challenge for protecting it. Out of the thirty interviewees rated on practical challenges in obtaining judicial remedy, twenty-one of them regarding this sub -theme maintained that women's knowledge on their rights and awareness is very low. IW-1⁸⁷ believes that; "women suffer from many types of violence and they don't understand it as an injury done to them because of poor background in Islamic education..... that is why the violence is sustained as a result woman suffers from mental illness like hypertension and other diseases due to neglect in health-care or husband attitude of neglecting her sexual concerns." Lending the voice of IW-2⁸⁸ who cried out that: "women due to lack of knowledge on their rights, even when we assist them to sue for the violence done to them, they will later pardon their husbands irrespective of the gravity of the violence and will say that "let it just go off, after all he is the father of my children." So, they use to embrace us. She added that "because of lack of evidence we used to go to human right and put forward the claims, of women, but due to lack of knowledge of the law on our own side, we don't know what and how to start or do it properly." On the other hand, lack of men's knowledge about women's rights is another challenge that practically hinders a proper judicial remedy. On this, five respondents believe that lack of men's education about marriage is the major reason for violence. In fact, IJ-3⁸⁹

⁸⁷ Cited supra, n.44

⁸⁸ Cited supra, n.79

⁸⁹ Cited supra, n.65

reiterated that: “men don’t seek knowledge before going into marriage, that is the reason for violence.”

Lack of Awareness of Women Litigants about the Work of a Lawyer and Poverty in Women

Part of the practical challenges under this sub-theme is that women are ignorant of the work of a lawyer and because of the high level of poverty in women, they cannot access legal services even if they want to. five of the respondents were clear on this and particularly IL-1⁹⁰ in relation to this maintained that: “most of the litigants are not learned about the work of a lawyer, and because of poverty that is bedeviling most of them, it is always impossible for them to hire such services”

Women’s Natural Inability of Speaking out Their Problems

With regards to this sub-theme, women’s natural inability to speak-out their marital problems is a serious issue militating against the effective enforcement of right and promoting same. Out of eleven interviewees that responded on this, the following has this to say: IJ-4⁹¹ lamented that; “*darar* when triggered will lead to mental instability especially when a victim is not able to voice out her problem which accumulates her worries, this will affect her physiology as a result her menstrual circle will cease.” IW-1⁹² frustratingly said: women can never be able to establish a claim of *darar* especially when it has to do with sexual satisfaction in marriage because of shyness and it is something that cannot be seen by another person to be able to help her.” IW-2⁹³ and IW-4⁹⁴ maintained that: “women cannot discuss their issues of sexuality even if they are cheated by men because of shyness.” IL-2⁹⁵ said: “most litigants are not vocal enough even though they have a very good case.” IV -5⁹⁶ said: “I told the court that my husband was treating me badly and when asked to explain I could not say anything further because I was shy to tell the judge that I was sexually starve and abandoned”

Lack of Proper Appreciation of MID Concepts by the Judges

Majorly, the respondents especially the judges were seriously pointing lack of knowledge of the subject matter from the side of the judges as a

⁹⁰ Virtual Interview with Interviewee lawyer 1, Danyaya chambers, No.15/16 Post office Road, Kano, on December 28th, 2024, @ 4pm- 5pm.

⁹¹ Cited supra, n.71

⁹² Cited supra, n.44

⁹³ Cited supra, n.79

⁹⁴ Cited supra, n.58

⁹⁵ Cited supra, n.61

⁹⁶ Interview with Interviewee Victim of MID 5, Kano State, on December 22nd, 2024, @ 11am- 12pm.

stumbling block to attaining proper judicial remedy. twelve of the interviewees are challenging the competencies of the *Shari'a* court judges. Others believe the judges are not reading wide enough to cater for the needs of litigants when it comes to this type of injury. Particularly, IL-1⁹⁷ said: "we do tender medical reports in some cases which we know that they are permissible in *Islam*, but most of the judges are not learned enough to accommodate it." IJ-2⁹⁸ emphasized that the wife should try and record verbal abuse, text SMS, videos and share it for people to hear and witness to establish hearsay and documentary evidence using CCTV and other modern technological innovations. But judges due to ignorance of this concept are left stagnant without awareness, they only said these innovations are not accepted Islamically because they are too lazy to explore enough Islamic text to gain knowledge, above all they only believe that injury can be physical since they demand for testimony from witnesses." Strengthening same, IL-3⁹⁹, IL-4¹⁰⁰, and IW-3¹⁰¹ believe that some judges are lacking competency when it comes to knowledge requirement/qualification of a judge in *Shari'a* court, in fact, they don't understand MID. In the same vein, IJ-3¹⁰² emphasized that "in the absent of evidence, it is permitted under Islamic law for a judge to pronounce *ta'azir* punishment because of his understanding of the merit of the case and ignore the evidence, but most of the judges don't do so because they don't seem to appreciate and understand the concept of MID at all"

Judges Attitude of Conservativeness/Lack of Judicial Expertise

This sub-theme was responded by seven interviewees. As another bottle neck to obtaining judicial remedy, the respondents emphasized that the conservativeness of the judges really affected the merit of these cases. Precisely, IL-3¹⁰³ said "conservativeness in religion is not allowed in *Shari'a*, judges should open up and learn more about *Shari'a*". While IJ-4¹⁰⁴ added that "judges should also dedicate time to use their intellect and investigate in to the matter. It is permitted under *Shari'a* ruling to keep away *nass* and use intellect if the need be." Emphasis regarding this IJ-2¹⁰⁵ said "there is no repercussion should the judge go out of maliki *mazhab* for a solution to this kind of injury-rigidity is not a good practice under *Shari'a*"

⁹⁷ Cited supra, n.91

⁹⁸ Cited supra, n.45

⁹⁹ Cited supra, n.57

¹⁰⁰ Cited supra, n.80

¹⁰¹ Cited supra, n.79

¹⁰² Cited supra, n.65

¹⁰³ Cited supra, n.57

¹⁰⁴ Cited supra, n.71

¹⁰⁵ Cited supra, n.45

Judge's Lack of Conformity with the Principles of Justice and Fairness, Respect for Human Dignity, Aims and Safety net Tools of *shari'a* in Determining MID Cases

Most importantly, whatever judges should do must be in accordance to the provisions of *Shari'a*. The responses of the interviewees showed that the attitude of the *Shari'a* court judges when handling the cases of MID is not intendem with the principles of Justice and Fairness ('*Adl* and '*Qist*'), Respect for Human Dignity (*Karamat al-Insan*), Protection of Life and Well-being (*Hifz al-Nafs*), Marriage as a Partnership Based on Compassion and Mercy. They also lack consonance with the safety net tools (*Maslaha*, '*Istihsan* and '*Saddul Dhari'ah*) and above all the compliance of these principles with the purposes of the *Shari'a* (*maqasidus-shari'a*) and their actualization and realization by way of deterrents (*zajr*) or preventive measures (*sadudh-dhari'a*), or minimization of their occurrence. In sum, one of the fundamental objectives of *Islamic* law is the protection of people's lives, property and dignity from harm and evil. Eight responses were captured particularly what IL-1¹⁰⁶ put forward that: "*Islamic* law is not stagnant, it is innovative. IJ-1¹⁰⁷ added that judges should have adequate knowledge to apply it else the aim is sharia is defeated absolutely." IJ-2¹⁰⁸ categorically said the attitude of the judges of the *Shari'a* court is not intendem with all the aforementioned principles, all are being defeated because wrong remedy is always issued to women thus, their rights are not being protected and promoted. IJ-3¹⁰⁹ added that a lot of the judges don't even understand this concept very well that is why they are not in conformity with aims of *Shari'a* and the safety net tools. This assertion is also affirmed by IL-4¹¹⁰.

Manly Attitude / Male Dominance of Judge's Affect their Decision on MID Cases

Under this sub-theme, the assertion was made by five respondents three of whom were victims, a lawyer and a policy-maker. This shows that judges are influenced by the manly nature/behavior and being aggressive when entertaining such cases from women litigants. Particularly among the respondents, IPM-2¹¹¹ established that "the problem is that 'the judges have already developed an attitude of ignoring this kind of injuries for a lot of reasons most importantly they also see it from the perspective of common men not from a judge's perspective or point of view....." IV-3¹¹² reiterated that "when I took my case to the court, the judge was angrily asking me why I wanted a divorce, when I

¹⁰⁶ Cited supra, n.91

¹⁰⁷ Cited supra, n.31

¹⁰⁸ Cited supra, n.45

¹⁰⁹ Cited supra, n.65

¹¹⁰ Cited supra, n.80

¹¹¹ Cited supra, n.49

¹¹² Interview with Interviewee Victim of MID 3, Kano State, on November 11th, 2024, @ 11am- 12pm.

told him that my husband is being mean and cruel to me among other things such as lack of maintenance, he harassingly said 'is that why you came here to seek for divorce? Honestly, I don't know what to say and I regretted coming to the come because of the unfriendly approach by the judge.

Lack of Judicial Activism

Inability of the judges to utilize their judicial powers properly portrays the lack of judicial activism, reiterating this, six respondents of whom are majorly judges argued that most of the time judges do not use to utilize their powers judiciously. They maintained that even in the absence of evidence, a judge can use his powers and secure admissions and or confessions and corroborating evidence to secure proper conviction which will be a good ground for awarding damages to this kind of injuries. IJ-4¹¹³ said: "as a judge, in the absence of evidence due to its difficulty, I use my power to compel the husband to confess or swear in rebuttal or conduct thorough investigation and seek corroboration from other women.....must judges ignore their powers and apply wrong remedy or allow the case to slip off their hands."

Findings

This study explored in-depth the perception and experience of stakeholders involved in protecting the rights of married women in cases of MID in Kano State. The study seeks to assist the government and particularly the judiciary in drawing up policies/measures and practice direction towards improving and simplifying the evidential procedure. The study is equally beneficially to the women in gingering them to know their rights and to demand the same. From the thirty face-to-face and virtual semi-structured interviews with the judicial officers, lawyers, psychiatric doctors, policy makers, women groups and victims of MID, the study found that obtaining judicial remedy that will be adequate in compensating victims of MID and protection of women's right in Kano State is plagued with a lot of challenges. These challenges include inability of women to prove their cases due to difficult procedures, judges lack of appreciation of the concept of MID/conservativeness/manly attitude and judicial activism/lack of conformity with the aims and principles of *shari'a*, and women's lack of awareness of their right /shyness and inability to speak out, and women's lack of awareness about the work of a lawyer and women's inability to access legal services due to poverty they are suffering from, they militate against the victims of MID in getting the protection they deserves. Drawing from the perspectives of the interviewees, the kano state judiciary has a long way to go when it comes to protection of women's right and granting of adequate remedy in case of MID. From the evaluation of the interviewees responses,

¹¹³ Cited supra, n.71

women are not informed and educated on their rights. Without knowing their rights and without information one would not expect serious right protection. The assumption here is that when women have information there is likelihood they would use it especially when it comes prevention of violations of such rights. There is equally the tendency that when the litigants are aware of existing protection laws they would take advantage of it. Similarly, women litigant's familiarity with the work of lawyers and trust in the judicial sector raises the likelihood of women's utilizing of those sectors in solving their grievances. Conversely, when women lack information, and are unaware of protection laws and how lawyers can protect them against violence, the possibility of utilizing these safeguards in solving their problems is zero. In fact, research like that of (Sanusi, 2025) in Kano posited that lack of information would affect the proper functioning of the *Shari'a* court system and the victim is the worst of it.

Although the study findings must be treated in line with its qualitative character as such not generalizable, nonetheless, the findings represent the challenges in obtaining judicial remedy and protection of women's right in Kano State judicial system. Additionally, the thirty respondents involved in this research were limited to judges, lawyers, psychiatric doctors, policy makers, women groups and victims of MID. The sampled research participants did not include men as target respondents. This study is further limited because it focused on the issue of the major practical challenge identified in obtaining judicial remedy. It is, therefore, suggested that future studies can include the other factors and can as well explore the other problems militating against the protection of women's right in Kano State and beyond.

Conclusions

The in-depth semi-structured interviews with stakeholders in the field of women's right protection revealed the perspective and the experience of the participants on the several challenges in obtaining judicial remedy in cases of MID. The findings of the study show that women litigants face several challenges that hinder them from getting protected from the exploitations in the marital home. Difficulty in proving claims and several negativities affecting the judges appears to be the major challenges. It can be safely concluded that the women litigants being uneducated and lacking in rights awareness, are vulnerable to exploitation. With MID cases deeply rooted in kano, increasing women's right awareness and policy intervention as recommended by various respondents should be the first-priority and the primary goal of the government, the preachers and women right advocates. When a woman is not aware of her rights how can she assert such rights? In fact, she can easily leave what is due to her and the marriage institution on the lack of awareness to continue suffering from injuries. Right awareness will influence the status quo and would push the *Shari'a* court judges to provide better evidential procedure and must have a way of

compensating the victims if women are conversant with their rights. This study, therefore, calls for women right awareness and education in Kano State. The litigants need to be educated, enlightened and sensitized. This is the responsibility of the government, the preachers as well as the women organizations. More so, the judges should be informed about their work, about the redress mechanisms and even the extant *Shari'a* protection laws. They need more judicial education and enlightenment on how to approach and handle complaints about any right violation in matrimony and as a matter of necessity they should come up with a more-simpler procedure that will help women access damages in this kind of injury. The findings of this study would assist policymakers, the judges and women groups in kano in planning and strategizing for better and efficient women protection. Additionally, the research findings would be beneficial to other Northern Nigeria State that operate Sharia Courts system.

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