



## **Judicial Responses to Matrimonial Incorporeal Injury under Islamic Law: Evaluating Legal Effectiveness and Remedial Challenges in Shari'a Courts of Kano State, Nigeria, with Comparative Reflections from Malaysia**

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### **Abstract**

Matrimonial Incorporeal Injury (MII) refers to non-physical harm experienced within marriage, including verbal abuse, cruelty, neglect of maintenance, sexual deprivation, abandonment, and coercive control, all of which undermine the rights and well-being of spouses under Islamic law. Although these forms of harm are recognized within the Shari'a legal framework, litigants often face significant evidentiary and procedural barriers in seeking legal remedies, especially in cases occurring within the private domain of marital relationships. This study evaluates judicial responses to MII in the Shari'a courts of Kano State, Nigeria, and offers comparative reflections drawn from Malaysian practice to assess the effectiveness of the existing legal mechanisms. The study aims to evaluate the response of the Shari'a courts in Kano State to MII cases, identify challenges in the evidentiary procedures, and compare them with the practices of Shari'a courts in Malaysia. It also seeks to propose procedural reforms that can enhance the effectiveness of Shari'a courts in handling MII cases. The research employs a qualitative design with a case study approach. Data is collected through the analysis of 30 cases filed in the Shari'a Courts, Upper Shari'a Courts, and Shari'a Courts of Appeal in Kano from 2011 to the present. Additionally, the study compares the practices of Shari'a courts in Kano with those in Malaysia, which are more responsive to indirect evidence such as medical and psychological reports. The findings of this study reveal that the Shari'a courts in Kano face difficulties in handling MII cases due to burdensome evidentiary procedures and a reliance on direct evidence, which often fails to meet the needs of the victims. The comparison with Malaysian Shari'a courts shows significant differences in responsiveness to indirect evidence, which allows victims to obtain justice more effectively. This study contributes significantly to the development of Islamic family law, particularly in the context of Shari'a courts in Kano. By identifying the shortcomings in existing

judicial procedures, the research proposes solutions to improve access to justice for MII victims, particularly women. Additionally, the comparison with Malaysia provides useful perspectives for procedural reforms that can be applied in Nigeria. These reforms are expected to improve the Shari'a court system to offer more just and equitable protection for victims of MII.

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

## Introduction

In Islamic family law, the protection of the rights of spouses, particularly women, remains a crucial issue, especially concerning emotional or physical abuse. One form of harm recognized under Islamic law is Matrimonial Incorporeal Injury (MII), which encompasses verbal abuse, neglect of maintenance, emotional cruelty, and coercive control. Although such injuries are acknowledged within the Sharia legal framework, the primary challenge faced by victims, especially women, is the difficulty in proving these cases in court. In many countries, including Nigeria, the evidentiary requirements for proving MII are often burdensome and disproportionate, exacerbating the harm that victims face in personal status matters under Nigerian law.<sup>1</sup>

This study focuses on the Sharia courts in Kano State, Nigeria, which have been handling MII cases since 2011. By reviewing 30 cases filed in the Sharia Courts, Upper Sharia Courts, and Sharia Court of Appeal, the research aims to analyze the procedures that have been in use for decades. The main focus of this study is on the excessive and harsh evidentiary requirements imposed on women trying to prove their MII claims. These complex and burdensome procedures often prevent victims from obtaining justice, leaving them in harmful marital situations without legal recourse. Furthermore, the study measures the extent to which the procedures used by Sharia courts in Kano align with Islamic jurisprudence principles on harm removal. In Islamic law, the fundamental principle is that harm must be avoided and removed. However, in practice, Sharia courts in Kano often fail to fully implement this principle, especially in cases involving non-physical harm like MII. The study analyzes whether the courts' procedures reflect these broader Islamic legal principles concerning the protection of victims in marital relationships and the removal of harm. This paper also critiques the judicial reliance on rigid procedural principles, which fail to account for the social and psychological realities faced by victims. A major criticism is that the Sharia courts in Kano remain overly

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<sup>1</sup> Hasbiah Tunnaïm Harahap Et Al., "Analisis Normatif-Komparatif Terhadap Reformasi Hukum Perkawinan Di Negara-Negara Muslim Afrika (Tunisia, Maroko, Sudan, Dan Nigeria)," *Innovative: Journal Of Social Science Research* 6, No. 1 (2026): 154-72, <https://doi.org/https://doi.org/10.31004/Innovative.V6i1.21427>.

committed to formalistic principles that do not allow flexibility in addressing non-physical harm such as MII. As a result, many cases of MII are dismissed or resolved inadequately, often leading to divorce through *khul'i*, which does not fully address the complex and deep issues experienced by victims. Therefore, this paper calls for reform in the Sharia court system to improve access to justice and provide better protection for those suffering from matrimonial incorporeal injuries.

The handling of Matrimonial Incorporeal Injury (MII) in Shari'a courts faces significant challenges, particularly related to the proof of non-physical harm such as verbal abuse and neglect of maintenance. Although Islamic law recognizes MII, the existing procedures often fail to provide adequate space for victims, especially women, to prove their claims. Amal Taufik Adnan in *Politik Syariat Islam* (2004)<sup>2</sup> highlights how political and social factors in Nigeria influence the implementation of Shari'a law, with procedural barriers that lead to injustices, especially in MII cases. Research by Ardo et al. (2024)<sup>3</sup> on the legal framework of waqf in Nigeria also points out the difficulties faced by Shari'a courts in addressing personal status issues, including MII, due to the mismatch between Islamic law and the prevailing secular legal system. A comparison with Shari'a courts in Malaysia, which are more responsive to indirect evidence such as medical or psychological proof, underscores the importance of procedural reform in Nigeria. Sukirman et al. (2023)<sup>4</sup> in their study on inheritance law in Nigeria also demonstrate how the rigid Shari'a court system overlooks many MII cases due to the difficulty of proving them. Based on these findings, this study aims to propose reforms in the Shari'a court procedures in Kano, Nigeria, to make them more inclusive and responsive to the needs of victims by adopting a *maqāsid*-based approach that is more adaptable to the social and legal context.

## Methodology

This study adopts a qualitative research,<sup>5</sup> combining doctrinal analysis of legal sources with empirical insights drawn from judicial practices in the Shari'a courts of Kano State, Nigeria, as well as comparative reflections from Malaysia. The primary method involves reviewing and analyzing 30 cases filed in the

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<sup>2</sup> Amal, Taufik Adnan. *Politik Syariat Islam: Dari Indonesia Hingga Nigeria*. Pustaka Alvabet, 2004.

<sup>3</sup> Ardo, Adam Muhammad, Adamu Abubakar Muhammad, Muhammad Bello Adam, Shafa'at Ahmad Aliyu, And Zuwaira Jibril Muhammad. "The Legal Framework Of Waqf And Its Role In Modern Economic Development In Nigeria." *Ahlika: Jurnal Hukum Keluarga Dan Hukum Islam* 1, No. 2 (2024): 162-178.

<sup>4</sup> Sukirman, Asrianti, And Oyo Sunaryo Mukhlas. "Inheritance Law In The African Legal System Of Somalia, Nigeria, And Ghana." *Al-Afkar, Journal For Islamic Studies* 6, No. 3 (2023): 337-348.

<sup>5</sup> Matthew Mitchell, "Analyzing the law qualitatively." *Qualitative research journal* 23, no. 1 (2023): 102-113.

Shari'a Courts, Upper Shari'a Courts, and Shari'a Courts of Appeal in Kano from 2011 to the present. This case analysis aims to assess the effectiveness of existing legal mechanisms in handling Matrimonial Incorporeal Injury (MII), focusing on evidentiary challenges, procedural rigidity, and the courts' understanding of non-physical harm. Additionally, the study compares the Kano judicial system with that of Malaysia, where more flexible approaches to evidence, such as psychological assessments, are applied. The data collected from the judicial review are used to propose recommendations for reforming the Shari'a court procedures to better accommodate non-physical harm and ensure equitable access to justice for victims, especially women.

### Meaning of MII

In matrimony a lot of things happen, and domestic violence otherwise known as *darar* is one of them. Husband and wife are taught to get along with their partners in good manner; however, in practice a husband or wife can commit disgraceful and hurtful actions toward their partners, both in words and actions. If bad treatment comes from the wife (NUSYAZ), the husband will advise, separate bedrooms or beat to educate her, if it does not work then the husband can exercise his unquestionable and absolute right of divorce to exit the abusive and unsatisfying contract marriage. On the other hand, if the husband behaves badly or neglect his responsibilities, the wife may file a complaint with the judge for a divorce because the husband has committed *darar* which is detrimental to his wife<sup>6</sup>. The question now is how could a wife establish a case of incorporeal injury since, it is something that is felt and it is not seen visibly<sup>7</sup>.

According to Dogarawa, A.B., Nushooz do happen when one of the spouses is refractory, so it can come from either of the spouse due to disobedience, hatred, contrariness, difference, harshness, aggression, etc. On the part of the wife it may revolve around;

- not beautifying herself for her husband when he desires that from her
- the wife disobeying her husband with respect to coming to his bed, refusing to respond to his calls,
- leaving the house without his permission or without any legal right to do so;
- not performing her obligatory religious duties such as failure to perform some prayers, fasting Ramadan,
- covering her "awra" or any other obligatory act of Islam.

On the part of the husband it revolves around;

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<sup>6</sup> Ibn Izzah, "Nusyuz And Its Solutions In Compilation Of Islamic Law From The Perspective Of The Qur'an" Jurnal At Duster 4, No. 1, (June9, 2021): 31-48, Available At; <https://doi.org/10.30863/Jad.V.4.L.1420> Last Accessed January 21st, 2024 @ 4:20pm

<sup>7</sup> Sustrino, A. T., Opcit (N. 19), P.2

- wrongfully elevating and raising himself arrogantly above his wife and above the obligations which Allah has placed upon him with regard to her;
- transgressing against her by beating, harming, reviling,
- abusing her and not treating her properly;
- failing to fulfill his mandatory obligations towards her such as support, etc
- becoming diffident towards her / unconcerned for her by boycotting her in talk or in bed,
- refusing to speak to her etc.<sup>8</sup>

*Darar* itself by scholars is divided into two, namely; deliberately doing harm/ injury (*darar iradi*) and beyond the ability of the husband or wife (*darar la iradi*). In other languages, there is an intentional injury for instance a husband intentionally hurts his wife physically by hitting her or hurting her psychologically by cursing, unintentionally, for example, the husband becomes poor or suffers from illness or disability after marriage, so his wife or partner feels suffering because of it. In general, *darar* itself can be a reason why a wife demands a divorce which in fiqh discussion includes the ability to file for divorce because the husband is disabled or sick, the husband has been away for a long time, the husband is missing, the husband does not provide a living, the husband is imprisoned and the like, all of which results in *darar* in one or both parties.<sup>9</sup> In most cases husbands suffering from *darar* don't go to court for remedies, they prefer to utilize the available option in hand i. e either give divorce to the disobedient wife or take in another wife/wives. This is the reason why the study tends to concentrate on the issue of women since it is going to examine the judicial attitude(s) of the court concerning the matter and up till now, the researcher has not come across any case of MID filed by man because of the option he has in hand.

### Understanding the Principles of Injury/Harm Removal In *Islamic Law*

The general rule under *Islamic law* is that causing damage is generally unlawful. Thus, preventing harm is a fundamental principle generally agreed upon and widely applied in *Islamic jurisprudence*. Under *Islamic jurisprudence*, whenever there is any dispute that arises out of human interaction, the basis

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<sup>8</sup> Dogarawa, A.B., Marriage And Divorce In Islam, Being A Paper Presented At A Marriage Gathering, At ABU Zaria, Mosque, Nigeria, P.14-15

<sup>9</sup> Sustrino, A. T., "Darar As A Reason For Divorce Law Suit In Fiqh And Legislations Of Some Muslims Countries: Study On Indonesia, Bahrain, Sudan, Qatar, And Morocco", Al-Istinbah Jurnal Hukum Islam, Vol. 7, No.1 Mei 2022 Available At [Http://Journal.lamcurup.Ac.Id/Index.Php/Alistinbath](http://Journal.lamcurup.Ac.Id/Index.Php/Alistinbath) On 18/09/2023 @ 5:45pm, P.2, P.210

of resolving it must be in conformity with the provisions of the *Qur'an* and *Hadith*.<sup>10</sup>

Regarding the *Qur'anic* injunctions prohibiting the infliction of *darar*, Allah says: "Let there be no harm against a scribe or a witness"<sup>11</sup> Also Allah says: "...And do not retain them for injury, so that you exceed the limit...."<sup>12</sup> In addition to the above, Allah says; "...Neither shall a mother be made to suffer harm on account of her child, nor a father on account of his child."<sup>13</sup>

Beyond the *Qur'anic* provisions, there are many prophetic traditions that prohibit infliction of harm. The famous hadith is the hadith reported on the authority of Abu Sa'id who said that the prophet (P.B.U.H) said; "Let there be no harm and no reciprocation of harm"<sup>14</sup> Another maxim that corroborates/originate from the hadith is "Harm must be removed".<sup>15</sup> A lot of jurists use to build their arguments and judgments in everything on these two citations. To prevent/ avert harm therefore is one of the bases of *Shari'a*. The above maxim i.e Injury must be removed (*al-darar yuzal*) originated from the Tradition: *La darar wala dirar*. These citations are directly related to MII because are harms inflicted on either of partners which are against the background of the marriage.

### Establishment of MII Cases and the Issue of Compensation

The issue of compensation in MID will only come up where a wife succeeds in establishing evidence against her husband's maltreatment or failure in rendering her conjugal rights or discharging his financial obligations. The wrong application of *khul'i* in *Sharia* Courts is evidence from the background of this research that MII in addition to being totally ignored let alone being compensated. This is because the method used by the *Sharia* Courts in establishing the case of *darar* generally, is making the claim abortive and leads to a potential miscarriage of justice. The famous provisions of *Tuhfatul Hukkam* as earlier on mentioned in the background states that *darar* can only be established by the testimony of witness or hearsay evidence. This therefore shows that the proof of MID though difficult is only possible if the harm/injury is manifest, tangible, physical/ corporeal. If it is incorporeal then from the foregoing the proof might be very difficult if not impossible. Furthermore, the *Shari'a* Court judges from their attitudes used to stick to the application of

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<sup>10</sup> Nor Mohammad Abdoeh, *Perbandingan Hukum Keluarga Di Dunia Muslim (Benua Asia, Afrika, Dan Eropa)*, 1st ed. (Kab. Semarang: The Mahfud Ridwan Institute, 2022).

<sup>11</sup> Al-Baqara (2):282

<sup>12</sup> Al-Baqara (2): 231

<sup>13</sup> Al-Baqara (2):233

<sup>14</sup> Ibn Majah, Mohd Bin Yazid, "*Sunan Ibn Majah*" Dar Al- Kutub Al-Ilmiyyah, , Hadith No. 2341, (1999)

<sup>15</sup> Mawafiy, A., "*Addararu Fi Fiqhil Islam*", (N. 8), P.15

direct evidence as a means of proof and in the absence of which, the Court has no alternative than to dismiss the case and direct the victim to institute a case for *khul'i* which occasions a lot of hardship to the victim, either way, incorporeal injuries are not taken care of and victims continue to suffer from its long-lasting effect.

On the other hand, *darar* could also be established through expert evidence, which is possible through a psychiatric evaluation of the victims which will reveal emotional distress and depression burn out of *darar*. More so, it is well known that in the field of evidence, evidence of a single expert witness is acceptable regardless of his/her religion. Evidence of the surrounding circumstances known as circumstantial evidence is recognized and acceptable in Islamic law. It is a well-known fact to all that whenever a woman makes a claim of lack of maintenance (including food, clothing, shelter, poor medical condition), verbal abuse, maltreatment of self or her parents and beating, in the event where the husband deny the allegation and the woman lacks evidence/witness to support her claim, the general rule is that the court shall strike out the case since it cannot be complimented with oath.<sup>16</sup> The presenter<sup>17</sup> relied on the following textual provisions;

1. the famous author of *mawahibul-jalil min adillatil khalil*<sup>18</sup> said that; "every claim relating to murder, marriage, divorce, return to the divorce, *walai*, emancipation of slave, lineage, must be substantiated with two just witnesses, you cannot either rebut or compliment it with oath".
2. Another similar provision is "every claim must be substantiated with two just witnesses, and the defendant cannot be asked to take an oath because of the claim"<sup>19</sup>
3. Another similar provision is; "two just witnesses are enough in matrimonial issues, divorce, and any other thing related to them provided it doesn't pertain to wealth or anything related to it."<sup>20</sup>

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16 Qadi A. A. Waiya, "Evidential Requirements In Cases Of Matrimonial *Darar* And The Attitude Of Judges In Addressing Same" Being A Paper Presented At A Joint-Session With Sharia Court Judges From Kano And Kaduna States, On The Adjudication Of Gender-Based Violence Cases @ Bafra International Hotel, Kaduna, On The 14th June 2025. Organized By Development Research Project Centre (Drpc) In Collaboration With Centre For Islamic Civilization And Interfaith Dialogue (CICID), Bayero University, Kano (BUK) And Supported By Ford Foundation.

17 Qadi A. A. Waiya - Upper Sharia Court Judge II

18 Al- Ahabbu, A. A., "*Mawahibul-Jalil Min Adillatil Khalil*", Vol. 4, (N.P), P. 219

19 Al-Azhary, A., "*Jaahurul Iklil*", Vol.2, Published By Maktabatu As-Saqafiyya, Beirut Lebanon, (2002), P. 228. This Is Also Supported With The Provision Of Badaruz-Zaujain By Abubakar Bin Hassan Al-Kashnawiy P. 117

20 Sa'ad, M., "*Dalilul Masalik Ala Mazahibi Imam Malik Bin Anas*", Published By Dar-El- Fikr Lil Dabaati Wan-Nashar, Beirut Lebanon, (1990), P. 138

4. Same is pronounced in the case of *Dan-Amarya V. Dan-Amarya*<sup>21</sup> that “the basic procedures which are settled law is that, in case of maltreatment or lack of maintenance by a wife, she has the duty of proving her allegations, where there are no witnesses and the complainant is unable to prove the allegations, the actions must be struck out or dismissed.”
5. In support of this, is another pronouncement made in the case of *Biri & Another V. Mai Ruwa & Another*<sup>22</sup> that “each claim is established through the testimony of two (2) irreproachable persons.”

This is the general rule and the practice of the sharia courts, exceptions to this are:

1. Repetition of claim: if a case is being struck out and after some time the woman decided to make another claim for the second or the third time on the same issue, the judge at that instance will appoint two arbiters one from her family and the other from the husband’s family, whatever their decision is may be, the judge is expected to endorse it.<sup>23</sup> see the case of *Panda V. Panda*<sup>24</sup> where it was decided that: “whatever the *hakamain* (arbiters) decided is to be executed and no excuse shall whatever be entertained from the spouses.”
2. Option of *khul’i* in a claim of *darar*: “it is the opinion of the majority of scholars that, *khul’i* is permissible when there is mutual agreement to it by the spouses”<sup>25</sup> The judge is expected to use the procedure provided in separating marriage of such kind.<sup>26</sup>
3. Hearsay evidence in relation to the claim of *darar*: it is a general view in Maliki school that whenever a man denies an allegation of *darar* against his wife, the judge can use hearsay to separate the marriage in matters of marriage, pregnancy, fosterage, menstruation, inheritance, apostacy and acceptance of *Islam*.<sup>27</sup> Same is pronounced in the case of *GABARI V. BABA NUWA*<sup>28</sup> that: “hearsay evidence is relevant and admissible on matters of pregnancy marriage and fosterage and also in menstruation, inheritance, birth, and the state of being in *Islam* or apostacy”. See also the case of *Dan Amarya V. Dan Amarya* <sup>29</sup> where it was decided that

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21 SCA Kwara (2019), Vol.4 SQLR (Part Iv), Ratio: 7, P. 784, Paras C-E

22 CA Kaduna (2019), 7 SQLR (Part Iii), Ratio: li, Paras D-F, P.

23 This Provision Is The Same As What Is Provided In Badaruz-Zaujain (P.208) And Ihkamil Ahkam (P.88-89).

24 CA Jos (2014), 2SQLR, (Part Iii), Ratio: 7, P.414, Paras B-F

25 Ibn-Rushd Al- Andulusi, “*Bidayatul Mujtahid*”, Published By, Vol.1p. 51

26 Abul-Hassan, A. A., “*Bahja*”, Published By Dar- EL- Fikr Lil Dabaati Wan-Nashar, Beirut Lebenon, Vol. 1,(1996), P. 153

27 Al-Muhakkik, M. Y., “*Ihkamul-Ahkam*”, Published By Dar- EL- Fikr Lil Dabaati Wan-Nashar, Beirut Lebenon, (2012), P.38-39

28 Suit No. CA/K/220/S/01, (CA Kaduna (2014), 2, SQLR (Part I), Vol.2, Ratio: li, Paras F-C, P. 93 & 94)

29 SCA Kwara (2016), Vol.4 SQLR (Part Iv), Ratio: 4, P. 781-782, Para’s F/B

- allegation of cruelty is to be established by the required number of witnesses or by means of notorious hearsay evidence.”<sup>30</sup>
4. Testimony of one witness plus an oath: the general rule as discussed above is that this kind of testimony is only accepted in property or commercial transaction cases and not any other.<sup>31</sup>
  5. Implied divorce without witness suffices when a man impliedly divorces a woman and there is no witness, the judge will ask the husband to take an oath that he don't intend to divorce the wife. If he swears that, is it. However, if he refuses to take an oath then he means divorce.<sup>32</sup>
  6. Express or documentary or jokingly divorce: According to Sheikh Abdulwahab Al-baghdadiy, divorce expressly made or documented or jokingly made are valid in all circumstances.<sup>33</sup>it is pronounced in the case of Muhammad V. Mai Kusa<sup>34</sup> that “under Islamic law, divorce is effective even, if one writes or utters it jokingly”. In the case of Sadiq V. Ibrahim<sup>35</sup> it is pronounced that; “it is a trite law that, once the husband pronounced divorce on his wife, it becomes binding.”
  7. Confirmation of injury/ harm through the confession of a husband or the manifestation of physical injury: According to the majority, whenever there is confession by the husband in respect of an injury done to his wife, the judge is expected to divorce the wife at the court's instance.<sup>36</sup>

### Review on Selected *Shariah* Court Cases Showing the Attitude of the Judges When Handling Cases of MID in Kano State

The study made a preliminary review of 30 cases being filed at the Sharia Courts, Upper Sharia Courts and Sharia Courts of Appeal from 2011 to date in some Kano State Sharia Courts, only 4 cases were filed on *darar* and all the rest are on *khul'i*. In almost all of them, issues of *darar* are obvious but ignored and all landed in *khul'i* with exception of 5. Even the 4 cases that were filed on *darar* and marriage dissolved on the grounds of *darar*, the Courts did not avert its mind on the Incorporeal nature of *darar* talk less of considering the quantum

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30 See Also Conditions For Accepting Hearsay Evidence Include 1. Testimony Of Plenty Of People (Uncountable), 2.The Testimony Is Too Heavy To Be A Lie, 3. Two Witnesses Are Accepted.

31 Al- Malikiy, A.A., “*AL-Maunatu Ala Mazahibi Alimil Madina*”, Published By Maktabatu Ainil Jami'a Lebenon, Vol. 2, (2016), P.360

32 Al-Azhari, S. A., “*Samaruddani*”, Published By Ash-Sharikatul Arabiyya Lil Dabaati Wat Tauzi, (2008), P. 305

33Al- Malikiy, A.A., “*AL-Maunatu Ala Mazahibi Alimil Madina*”, Published By Maktabatu Ainil Jami'a Lebenon, Vol. 1, (2016), P.381-382

34 CA Kaduna (2019), 7 SQLR (Part Iii), Ratio: V, Paras E-B, Pp. 551-552

35 SCA Kwara(2019), 7 SQLR (Part Iii), Ratio: I, Paras D, P. 627

36 Abubakar Bin Hassan Al-Kashnawiy, “*Badaruz-Zaujaini*”, (N.P) , P.10

and ascertaining the extent of the injury and above all remedying the situation. These cases take three forms

1. A claim for *khul'i* was put before the Court either by the wife or through her counsel, when reading the *Da'awah* (claim as alleged by an aggrieved party) reasons will either be she is tired of him and his maltreatment and wants to free herself or he has not been properly /adequately taking care of her or has abandoned her, the case will therefore end in *khul'i* as claimed and all issues of *darar* mentioned will be ignored. See the following cases;
  - Hindatu Yakubu U/Uku V Musa Danyaro U/Uku<sup>37</sup>
  - Hauwa Bala Kanti V Auwalu Yakubu Kanti<sup>38</sup>
  - Alawiyya G/Dabai V Mudan Suleiman G/Dabai<sup>39</sup>
  - Rabilu Yau V Bilkisu Abdullahi<sup>40</sup>
2. A case of *darar* is filed and the husband denies it. The husband will plead to the Court to allow him to make a reconciliation effort of taking his wife back because he still loves her popularly Known as *Biko* in Hausa. This application is always granted and, in most cases, does not usually succeed. At the end of the day the husband will say (in most cases and at times the judge will put it forward) since she insists on not continuing the marriage then she must pay back the dowry. The woman will out of no option accept *khul'i*, the issues of Matrimonial *darar* whether Corporeal or Incorporeal will be ignored and will just die like that, Neither the Court nor the parties will go back to it. See the following cases.
  - Nana Fiddausi V Isa Musa Beguwa<sup>41</sup>
  - Hayatu Labaran V Sadia Isa Yan Lemo<sup>42</sup>
  - Fatima Ibrahim V Malam Salisu Dawanau<sup>43</sup>
  - Amina Abubakar V Alhaji Shuaibu <sup>44</sup>
  - Munira Ali V Husaini Bakoji<sup>45</sup>
  - Aishatu Aliyu Gachi V Aliyu Gachi<sup>46</sup>
3. A claim for *khul'i* is filed before the Court, the woman has mentioned the prize she wants to give and the husband will reject her offer for a

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37 CV/519 /2017 SC UNGUWA UKU -Unreported

38 Cv/126/2018 Usc Sumaila Usc Rano -Unreported

39 Cv/137/2022 Usc Rano -Unreported

40 Sca/Kn/Cv/233/2020 -Unreported

41 Cv/373/2018 Usc Rano -Unreported

42 Sca/Kn/Cv/34/2019 -Unreported

43 Cv/58/2018 -Unreported

44 Cv/128/12 Doya Sc Bauchi - Unreported

45 Bas/Sca/Cva/27.Bh.2011

46 Cv/134/12 Doya Usc -Unreported

higher price and other claims, in the course of the bargaining the woman arguing she can't pay that amount will now be raising issues of *darar* including the incorporeal ones bearing in mind the extent of how she suffered from the husband's cruelty in order to convince the Court that he doesn't deserve the said amount. At this juncture either the judge or the opposing counsel will object the issue of *darar* on ground that it is not her initial claim. See the cases of;

- Zainab Abubakar Muhammed V Shamsuddeen Aliyu Yusuf<sup>47</sup>
- Zulai Usman Jalabi V Aminu Isyaku Kurna Jalabi<sup>48</sup>
- Hajia Usaina V Alhaji Habibu Tsireku<sup>49</sup>

Generally, granting *khul'i* to a wife already suffering from Matrimonial *darar* though a relief, is also another additional burden (or rather harm in addition to the harm/injury she had already suffered or still suffering) placed on her because she is subjected to the payment of dowry, the worst of all in this situation is that neither the Court nor the victim will be able to mention the issues of Matrimonial *darar* whether Corporeal or Incorporeal again. It is a well-KNown principle in Islamic law (see our previous discussion on the subject matter in chapter two of this research) that harm is not eliminated by another harm, meaning; we cannot avoid harm by doing another harm. According to Imam Khurdabi while commenting on the verse 2:229 with regards to the permissibility of *khul'i*, he said; "If a man has not Cheat /harm a woman, he is entitled to collect anything from her..... ." <sup>50</sup>

This is also supported by a judicial pronouncement that once there is *darar*, then *khul'i* seized to stand in the case of USMAN v USMAN<sup>51</sup> where it is pronounced that; "It's a condition for the operation of *khul'i* that there shall be no harm from the husband, that is in order to guide against occurrence of *khul'i* by means of harm from him Can be caused by anything that is harmful to the woman," In the same case it was added in another paragraph on the same issue that; "Where there is *darar* harm against a wife and there is a claim for *khul'i*, once *darar* is established by the wife against the husband, *khul'i* cannot defeat *darar*, in other words the claim of *khul'i* will fail and that of *darar* once established will succeed".<sup>52</sup>

From the pronouncement of the case above i.e once *darar* is established by the wife against the husband, *khul'i* cannot defeat *darar*, in other words the claim of *khul'i* will fail and that of *darar* once established will succeed, the

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47 Cv/331/2018 Sc Fagge Yan Alluna -Unreported

48 Cv/63/2018 Usc Rano -Unreported

49 (1991)1NWLR, VOL.R, 358 At 365 Para G

50 Qurtabi, M., "Jamiul Ahkamil Quran," Published By Dar Al- Hadith, Maktabatut-Turathil-Ilmiiy, Vol.2, (N.D) Page

51 (2003) FWLR, Part 181, Page 1634-1636, Para C\_E

52 (2003) FWLR, Part 181, Page 1648 At1649, Para A\_H

question now is how can a wife reasonably establish *darar* in this situation where by the evidence and procedure does not adequately give room for that following the arguments above? This shows that the procedure adopted by the Sharia Court judges in hearing and resolving *darar* do use to occasion injustice for women which is against the objectives of *shari'a*. Another question is how do we address these judicial flaws that always seem to be a problem to all, lawyers, judges and above all victims of *darar* especially the incorporeal ones that we are not comfortable with? It is based on these afore-mentioned issues that whenever a woman files a case on *darar* it becomes almost always very difficult if not impossible in cases of incorporeal *darar* for her to prove. By experience and because of the problems that are associated with this kind of evidence, both lawyers and judges are not comfortable with it. Lawyers always do advice their clients to forget about the issue of *darar* and go ahead to apply for judicial separation through *khul'i*. Judges also prefer *khul'i* because is much easier than cases of *darar* because of the unfriendly nature of the evidence & procedure and the very urge for them to comply with the aims of *Sharia* in removing the woman from the harm that she is suffering from.<sup>53</sup> According to one serving *Qadi*<sup>54</sup> of the *Sharia* Court of Appeal, Kano and a recently retired *Qadi* of an Upper *Sharia* Court, Kano<sup>55</sup> during a discussion sessions with them about the prove of *darar* cases, they both lamented on the fact that with time cases of *darar* will no longer be filed because of the problems highlighted above. They maintained that all cases will be filed for *khul'i* because it is easier to remove the woman from harm rather than to leave her suffering because of lack of evidence to prove her case.

Based on a cleaned-up register, a total of 11,713 cases from 90 courts were reviewed by another author<sup>56</sup>. These cases identified both civil and criminal family law issues. The review provided an insight into the nature of the predicaments in adjudicated marital problems in the state. The research was conducted based on identifying most preponderant marital problems adjudicated in kano between 2016-2020, to establish the nature of cases. The cases selected cut across levels of sharia courts including lower and upper sharia courts across three senatorial zones namely; kano central, kano south

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53 Class Discussions Held With My Phd Colleagues Who Are All Practicing Lawyers, A Judge And Some Working Under The Ministry Of Justices In Various States On The 8th June 2023.

54 Discussion Held with Qadi Atiku Mohammed Bello Esq On 14/07/2023 At His Office In The Sharia Court Of Appeal Division, Audu Boko Secretariat, Kano State, At 2:30 Pm.

55 Discussion Held With Qadi Hadi Tijjani Muazu Esq On 08/07/2023 At His Mudarassah At Tal; Udu, Mandawari Quarters, Kano, Around 11;30 am.

56 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>

56 *Ibid*, P,101

and kano north which is made up of 15 local government areas<sup>57</sup> officially classified as urban while the other zones are considered rural .in each zone we have one upper and 2 lower courts were reviewed in kano. 36% of the judicially decided cases are either accepted or rejected while 64% of the undecided cases reviewed are either struck out, dismissed, kept pending or transferred to other courts. Of the 65% of the case of *darar* as termed by the thesis and 71.5% of cases of *Nafaqah* that are judicially decided 72% and 48% of them are struck out or dismissed for lack of evidence.an even higher percentage of about 72% of the claims for harm by women were either struck out or dismissed by the judges. Reason being the issue of difficulty in proving the harm in the marital home. in most of these cases the woman is compelled to resort to *khul'i* for her to be able to exit abusive marriages. Another category of claim in the thesis is *shiqaq* (dispute conflict), of the 75% judicially decide cases, all, are accepted. This category generally involves claims of a lack of peace in marital home, eviction/expulsion from matrimonial home and seeking to know the status of the marriage usually when a wife is sent home to her parents /guardian for a very long time without pronouncement of divorce. <sup>58</sup>

### Review on Selected Cases In Another Islamic Jurisdiction Like Malaysia For Comparison With Kano State Cases

In the attempt to provide a justification on *darar* or harm inflicted onto wives where husband had willfully neglected to provide for the maintenance, twenty-four (24) Syariah (syaria is the malay version of the word *shari'a*<sup>59</sup>) cases registered in the state of Selangor were selected. Using the purposive sampling cases from the Syariah Court of Gombak Timur is selected to represent the said state over a period of five years from 2009 to 2013. The cases involved the application of *fasakh* by the wives on the ground of non-maintenance as provided under section 53 of Islamic Law (State of Selangor) Enactment 2003. For this research, five out of unreported cases will be discussed accordingly. The unreported cases are highlighted to demonstrate that the Syariah Court Judges employed the concept of prevention of harm as expounded in the *Quranic* revelation, the *Sunnah* and the discussion of the jurist in allowing dissolution of marriage in the case of non-maintenance. In the case of Noor Aishah Binti Ali Akbar V Mohd Shahnaz Bin Mohd Amin<sup>60</sup>, Approximately a month

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57 Made Up Of Bichi Lower, Fagwalawa Lower And Gwarzo Upper Sharia Courts All From Rural Areas, From Kano North We Have Karaye Lower, Kiru Lower, And Tudun Wada Upper All From Rural Areas, From Kano South, Ungogo Lower, Kwana Hudu Lower And Goron Dutse Upper All From Urban I.E Kano Central

58 Sunusi, S.L., *Supra*, P. 79

59 Mohammad Asmadi, A., "Wives Right To The Government Retirement Benefit: Is It Syariah Compliant Or Subject To Fara'id Distribution", *Journal Of Islamic Law Reform Review*, Vol.8, Nos. 1-2, Jan - Dec., (2012), P. 127-146

60 (Mal Case 2012)

after their marriage. The wife was often disrespectfully shouted she was slapped until she became unconscious. The husband's attitude of ignoring her care, needs and maintenance had caused her to be emotionally suffered and depressed. The wife had also been referred to a psychiatrist and diagnosed as having 'Major Depression'. Two witnesses were also called to testify. The Court then allowed the application and dissolved the marriage through *Fasakh*. In the case of Rohizam Binti Maamor V Hasman Bin Hussin<sup>61</sup> the parties had been married in 1985. The wife claimed that the husband had neglected to provide for her maintenance since November 2006 and failed, which, had led the wife to live in distress. The wife also testified that she could not bear with the marriage due to the husband's neglect. Six years after being ignored and denied of her maintenance, the wife then resort to apply for *fasakh* divorce. The application was allowed by the Court. There are also cases where the wife applied a dissolution of marriage on several grounds such as in the case of Habsah Binti Yahya V Suhaimi Bin Salleh<sup>62</sup>. The wife claimed for a *fasakh* dissolution on several grounds namely; that the husband had failed to provide for her maintenance since 2006 which caused her suffered out of the neglect, and that she was living in constant fear since the husband had been owing money from loan sharks. The husband was never present during the trial, and the wife was never declared disobedient (*Nusyuz*). The Court allowed the application and granted *fasakh* divorce on the ground of failure to provide maintenance for more than 3 months.

In the case of Sariyana Amilia Binti Daman Hairy V Mansur Bin Ahmad<sup>63</sup> the parties had been married in 2001. The wife filed for a *fasakh* divorce on the ground of failure and neglect of the husband to provide for maintenance for more than 3 months. The wife had not been receiving her maintenance since 2004 until the case was filed which was almost 8 years. She alleged that constant misunderstanding between them had made their marital life impossible and the desertion by the husband had caused her to be depressed. The Court then allowed the application and granted *fasakh* on the ground of failure of the husband to provide maintenance for more than 3 months. In an identical case of Masrifawati Binti Humala Marpaung V Mohammad Wazir Bin Yeop Mat<sup>64</sup>, the wife claimed that the defendant had been ignoring to provide for her maintenance since 2002 until the case was registered in 2011. During those nine long years, the husband was present but denied her right to maintenance. The wife testified that she suffered emotionally out of the husband's ignorance. The Court then granted *fasakh* on the ground of failure of

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61 (Mal Case 0135/2012)

62 (Mal Case 235/2012)

63 (Mal Case 0039/2012)

64 (Mal Case 0024/2011)

the defendant to give sufficient maintenance for more than 3 months and that the husband's conduct had caused harm (*darar*) to the wife.

### Discussions on the General Review of Cases

The above cases demonstrated that prolonged emotional abuse could lead to a mental depression which is detrimental and imposes harm on one's life. In the case of Noor Aishah Binti Ali Akbar V Mohd Shahnaz Bin Mohd Amin, for instance, the wife suffered major depression out of the husband's behavior and failure to maintain. In the case of Rohizam Binti Maamor V Hasman Bin Hussin And Habsah Binti Yahya V Suhaimi Bin Salleh, the wives had been denied their rights to receive maintenance for six years. Meanwhile in the case of Sariyana Amilia Binti Daman Hairy V Mansur Bin Ahmad And Masrifawati Binti Humala Marpaung V Mohammad Wazir Bin Yeop Mat, the wives had patiently waited for eight to nine years before resorting to break the marriage chain by Court order.

Given the duration the wives remained in an abusive marriage, theories have been developed to account for the various factors influencing wife's decision., suggested that the feelings of commitment were strongly linked to stay or leave behavior; the more committed a wife to the marriage, the longer she would opt to stay. Among other factors include psychological entrapment as for example a wife may have spent a great deal of time, energy and work trying to make the marriage work and hoping that the relationship will improve.<sup>65</sup> The decision may also be due to delay discounting behavior, where a victim may continue to remain in an abusive relationship in-order to avoid the tension associated with making an active decision to leave. Regardless of the reasons,<sup>66</sup> the impacts of the husband's denial maintain, coupled with the years the wife remained in the marriage are evident as causing emotional abuse. It can be inferred from the selected decided cases that it is not the intention of the Court to examine the different opinions of jurists of the four schools of law, or to limit the observance to a particular school of law. On the contrary, the rulings are based on the provision provided under the legislation which has been carefully enacted based on the spirit and purpose of *Shariah* in upholding justice. Thus, the Court in its wisdom would evaluate the extent to which harm is normally tolerated in marital life, whether it is justified to repudiate a marriage.<sup>67</sup> *Fasakh* is a kind of divorce granted to a wife by the Court. A husband

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65 Strube, M. J., "The Decision To Leave An Abusive Relationship: Empirical Evidence And Theoretical Issues", *Psychological Bulletin*, 104 (2): 236-250, (1988)

66 Bel, K. M. & Naugle, A. E., "Understanding Stay/Leave Decisions In Violent Relationships: A Behavior Analytic Approach. *Behavior And Social Issues*", 14, 21-45, (2005)

67 Tengku Muda, T. F. M. & Muhammad, A., "Darar Or Harm For Failure To Maintain A Wife: A Qur'anic And Juristic Approach On Marriage Dissolution", *HR Mars (Exploring Intellectual Capital)*, *International Journal Of Academic Research In Business And Social*

cannot oppose a demand for dissolution of marriage by alleging that his wife has knowledge of his circumstances since she is not obliged to continue the marriage with non-maintenance longer than she likes.

Similarly, Maliki's allow a wife to claim dissolution of marriage through *fasakh* in the case of lack of maintenance provided that the husband's inability to give maintenance is not something in the past, but it is husband's insolvency or of his inability to provide maintenance. On the contrary, if the wife met him as a beggar, and she consented to his occupation, and he later left his occupation as a beggar, in this condition the wife can apply for *fasakh*. If the husband cannot establish his poverty and he neglects or refuses to maintain her, the judge can order him to provide maintenance or to divorce her. If his poverty is established, the judge in his discretion will allow him days as respite until he gains solvency. If the husband is still unable to provide for her maintenance, then the judge will order for a revocable divorce. The husband shall be given extra time if he is ill or is in jail during the given duration. Should he become solvent and refuse to maintain the wife, a minority view among the Maliki's stated that the judge can imprison him until he maintains the wife, while another viewed that the judge can himself dissolve the marriage.<sup>68</sup>

The Hanbali jurists meanwhile viewed that if a husband failed to maintain the wife the minimum requirement of *al-nafaqa* from either food, cloth or lodging, the wife shall choose whether to demand *fasakh* from the husband without allowing him any respite, or to remain in marriage and wait as long as she wishes, and the maintenance will be considered as debt owed to her by the insolvent husband.<sup>69</sup> The most preferable or '*Rajih*' view according to contemporary jurists, Wahbah Zuhayli is the opinion of the majority of jurists based on the reliability and strength of the proof or '*Dalil*', as well as to prevent harm to the wives. He added further that there is no harm or return of harm in Islam.<sup>70</sup>

On the type of dissolution of marriage due to the non-providence of maintenance, the Maliki's considered it to be revocable divorce. The husband can reconcile and return to the wife during her waiting period or '*iddah*' if he later proves he is able and willing to provide the maintenance. This according to the Maliki's as resembling divorce 'by *ila*' whereby a husband swearing by God or making a declaration to abstain from sexual intercourse with his wife for a period of four months or a longer period. In this regard, the Shafi'i's and Hanbali's (Ibn Qudan) are of the view that *fasakh* will not affect the number of

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Sciences, (2017), Vol. 7, No. 8, P.522, Available At <http://dx.doi.org/10.6007/Uarb55/V7-18/3259> Accessed On 08/08/2023 At 2:30pm, P. 536-539

<sup>68</sup> Al-Jaziri, A. R., "*Kitab Al-Fiqh Ala Mazahib Al-Arba'a*", Dar Ibn Hazm, Beirut, (2000),

<sup>69</sup> *Ibid*, P.10

<sup>70</sup> Al-Zuhayli, W. "*Al-Fiqh Al-Islami Wa Adillatu*", Daral-Fikr, Qahirah, (1997)

*talaq*. Thus, even if the husband later proves himself able and willing to provide the maintenance, he shall only remarry the wife on a new *aqad*.<sup>71</sup> Be that as it may, from the Malayan cases show cased above, it is evident that in all them there are element of MID such as emotional abuse, mental depression, major depression, psychological entrapment, distress and tension which are all detrimental and can impose harm on one's life. The cases also justified the fact that, though all these elements of incorporeal injuries are present, they are all ignored by the Court as no attempt to discuss the issue or to offer compensation to the victims. The fact that in all the cases, divorce through *fasakh* is being granted by the Court because of clear manifestation of *darar*, the situation in Malaysia is far better than in Nigeria because in Malaysia, the Court considers the harm and grant divorce (*fasakh*) at its instance without the need for the wife to pay in anything, contrary to the situation in *Sharia* Courts In Kano, where they subject the wife to *khul'i*, despite all injuries suffered as it is clearly seen in the cases show cased above. Though the aim of the Courts in the two jurisdictions is to quickly remove the wife from harm, they ignore the existence of the incorporeal injury/harm and therefore made no attempt to compensate the victims of the Injury. It is also evident from the discussion above that most of this MID do happen out of sight in matrimonial homes without any tangible evidence to show and the *Sharia* Courts in Kano are deliberately ignoring them and are not ready to devise another means to gather evidence and substantiate the establishment of the offence of MID. These are the major flaws committed by the judiciary in determining MID.

### Flaws in the Determination of Matrimonial Incorporeal Injury (MII) in Shari'a Courts of Kano State

A lot of cases reviewed, and others showed how victims of MID are suffering, in most cases, evidence of medical diagnosis was submitted to the court, yet nothing has been done by the court about that. The attitudes of the courts in ignoring MID is overwhelming and not desirable since they occasioned injustice to the victims of the injury and coupled with the wrong remedy application. This shows that the procedure has been occasioning injustice against the victims for decades of its application. See the cases below.

1. Rahma Abdulmannan V. Ismail Ibrahim Ruogga<sup>72</sup>; The suit is a claim of separation /divorce through *khul'i*. The 25year old Rahma was deserted by the husband after the marriage from 02/03/2021 to 01/08/2024, The husband flew out of the country a day after the marriage and since then, she continued to stay alone in the matrimonial home. The husband always claimed he hasn't got enough time to visit her because of the

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71 Tengku Muda, T. F. M. & Muhammad, A., Supra, P. 531

72 UK/CCC/707/24 (RS-14/08/2024, (RS-05/09/2024)) -USC Kasuwa

nature of his job in Europe. However, the husband used to spend a lot of money for her financial keep up. As result of this, the wife felt very ill and depression and anxiety out of other things were diagnosed by two different hospitals in Nigeria and later in Egypt respectfully. Both the two medical reports indicating symptoms of depression and negative psychological well-being were brought to court. Up till the time judgment of *khul'i* was giving, the victim is still receiving treatment. The victim paid thirty-million-naira ransom for her freedom. It is clear from the fact of the case that the wife suffered from emotional disturbance because the husband has abandoned her needs and feelings sexually. Sexual abandonment is a matrimonial injury that cannot be seen and despite medical evidence, the court chooses to ignore it.

2. *Hauwa Sunusi V. Abdulmalik Rilwanu*<sup>73</sup> The suit is a claim of separation /divorce also. The 30year old Hauwa was sexually starved by the husband two years to the time she is making the claim. The husband appeared to the court after 3 sermons were sent to him and denied the allegation. The judge gave them time to go and settle their issues and come back with a resolve. Her parents forced her to go back but she refused because the husband is not sexually relating to her because of which she started developing feelings of anxiety and depression as she presented in the court and was referred to by a psychiatric doctor. Up till date she is receiving medical therapy and judgement has not been given for the case. Sexual starvation/abandonment is a matrimonial injury that cannot be seen and despite medical evidence, the court chooses to ignore it.
3. *Zainab Abubakar Muhammed V Shamsuddeen Aliyu Yusuf*<sup>74</sup>This is a case of dissertation for eleven months and a claim of separation through *khul'i*. There was a serious argument on what to pay as prize for redemption because the husband demanded a high price. The claimant argued that throughout the period of dissertation, she has been sick-out of depression for almost seven months and the husband neither visited her nor paid for her medication. The husband admitted to the fact that he Knew she has been ill. The trial court held that it is not part of her claim and separated the marriage through *khul'i* and advice the victim of MID to file another case for *darar* in any other court of competent jurisdiction
4. *Khadija Abdullahi Gwangwazo V Abubakar Garba Sheka*.<sup>75</sup> The claim was about ascertaining the position/ status of her marriage as she has been abandoned by the husband for good seven months and in addition to that

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73 CV/457/24- USC - Shahuci - Unreported

74 CV/33/2018 - SC No. 1 Fagge Yan- Alluna - Unreported

75 CV/213/2018 - USC Fagge - Unreported

- no maintenance. The court separated the marriage through *khul'i* and ignored all MID issues raised.
5. Zulai Usman Jalabi V Aminu Isyaku Kurna Jalabi.<sup>76</sup> This is a case of maltreatment, husband's cruelty and mischievous acts. The husband is a drug addict and turned his house into a club. The wife filed a suit against him and claimed marriage separation on grounds of *darar* and was successful. On appeal, the case was retried, and the marriage was dissolved through *khul'i* because the husband insists on continuing the marriage and since the wife do not want to continue, she should pay ransom. All MID issues were ignored as usual.
  6. Nana Fiddausi V Isa Musa Beguwa<sup>77</sup> A claim of marriage separation on grounds of dissatisfaction and lack of maintenance for nine months. After he came back he sent her away to her parent's house for three weeks. The defendant in this case argued against maintenance and provided evidence of payment for upkeep. However, he admitted that he has sexually abandoned her for more than six months on several instances but not eight or nine months as she alleged. Nonetheless the husband is pleading to the court that he wants his wife back. Despite the admissions and confession from the side of the husband, the wife was ordered to pay ransom since she is not interested in continuing the marriage as the husband wishes. All MID issues were ignored by the court in addition to wrong remedy being administered to her.
  7. Fatima Ibrahim V Mal. Salisu Dawanau<sup>78</sup> An unsuccessful claim of marriage separation on grounds of *darar* pertaining lack of maintenance, verbal abuse and maltreatment. The court separated the marriage under *khul'i* and argued that is a means of separation even if it is not claimed for initially. All MID issues raised by the victim were ignored by the court as usual.
  8. Ramlatu Sunusi Karefa V Yusuf Aliyu Yusuf<sup>79</sup> the case was that of dissatisfaction and claim of separation through *darar*, but because the victim suffered so much and was frustrated by the lack of witness to testify to the fact that the husband was away for more than a year, she has to agree with the option that was raised by the husband that he will divorce her only if she will be able to pay ransom. All MID issues raised by the victim were ignored by the court as usual.
  9. Fatima Isyaku V Umaru Dan Fulani.<sup>80</sup> The case is a claim of marriage separation on grounds of *darar* which was successful. The husband

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76 CV/63/2018 - USC Rano - Unreported  
77 CV/373/2018 - USC R/Lemo - Unreported  
78 CV/85/2018 - USC Gwammaja - Unreported  
79 CV/380/19 - USC T/Wada - Unreported  
80 CV/10/2015 - USC G/Dutse - Unreported

deserted his wife for more than one year with lack of food and other maintenance including health injuries which were backed up with medical reports, yet the court ignored this health injuries let alone thinking of how to compensate them.

10. Mariya Mal. Dahiru Daddaudav Kasim Tsoho Soja Bichi.<sup>81</sup> A claim of separation on grounds of *darar* was sustained. The victim was deserted for over ten months with prolonged sickness. She suffered from anxiety and distress in addition to lack of maintenance and medical care. Even though the claim was successful, there was no attempt by the court to take care of the MID issues let alone compensate them.

### **The Emergence of Kano State *Sharia* Court (Practice Direction) No.1 of 2025<sup>82</sup>**

The emergence of this practice lately has been a good thing. It was mentioned earlier in the background of this study that, because of the problems associated with the procedure, both judges and Lawyers are not comfortable and happy with it. Lawyers always dodge the procedure and advise their clients to apply for judicial separation through *khul'i*. Judges also prefer *khul'i* because of the unfriendly nature of the evidence and procedure and the urge to remove a woman from a harm she reasonably lacks evidence, and the believe that everyone has on this evidence, so is always impossible for the wife to get it due to the private nature of relationship and the invisibility of the harm. This worrisome circumstance forced the judiciary to arrive and formulate a new practice direction which justifies the existence of the problem raised by this study. The provision of practice direction No.1 of 2025 is a new development adopted by the *Sharia* courts in kano and by the exercise of the powers conferred upon the Grand Qadi of Kano State<sup>83</sup> by section 279 and section 3 of the 1999 constitution of the federal republic of Nigeria and the provisions of Kano State *Sharia* court Law 2000 respectively and other powers enabling him to make the following practice direction.<sup>84</sup>

The emergence of this rule is an indication that the general rule of taking two witnesses to testify on a marital issues for long has been very unfavorable and proved injurious to women. The existing evidential requirement for women to proof cases of MID as argued earlier is too excessive, burdensome and harsh which amounts to additional violence done against them in matters of personal

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81 CV/99/2021 - USC Bichi Unreported

82 Cap LFN

83 Dr. Tijjani Yusuf Yakasai

84 It Is Cited As Kano State (Practice Direction) No. 1 Of 2025 And Deemed To Have Come Into Force On The 19th Of February, 2025. (Sec.1)

status under the Nigerian legal system. The new rule per se<sup>85</sup> justifies the fact that old one has been proved to be an injurious policy that existed for decades of application, since these injuries have practically been ignored by the court due to the inability of the wife to establish it and the difficulty involved in getting the required evidence and procedure, which result in the court's attitude to dismiss the case and or direct the victim to institute another case for *khul'i*, either way, the incorporeal injuries are ignored while victims continue to suffer from its long lasting effect. The research has already criticized the old rule using base on the fact that it is incompatibility principles of harm removal, specification of the categories of rights in *shari'a* (i.e specifying the principles of entitlements- *usul-al-istihqaq*) and the principles of compensation of injury which all traces their origin from *usul-al-fiqh*, *maqasid al-shari'a*, *al-qawa'id al-usul al-fiqhiyya*, *maslaha*, *istihsan* and *saddul dhari'ah*. This provision is the not the first of its kind because it is a replica of the exception no. 4 of the general rule of accepting evidence (which shows that the rule has been in existence but the judges abandoned it and stick to other rules that favors them) as cited above.<sup>86</sup> Precisely, section 6 (a) provides that:

6(a) "the court may require the husband to take an oath in rebuttal to an unsubstantiated allegation of physical or oral abuse or maltreatment levelled against him provided that the alleged abuse or maltreatment is claimed to have occurred within the exclusive matrimonial domain of the couples inaccessible by any other person."

6(b) "if in compliance with requirement under (a) above, the husband has taken the oath, the courts shall there and then strike out the case."

6(c) "in the event of the husband's failure to take the oath, the burden of taking the oath shall shift to the wife, and the following consequences shall emerge; (i) if the wife has taken the oath, the court shall be at her discretion, and her application, the court shall instantly dissolve the marriage or alternatively, if she so wishes, the court shall caution the husband and put him on probationary warning. (ii) if, however, the wife refuses to take the oath, the court shall before strike-out the case, caution both the husband and the wife and urged them to guard against encroaching into each other's right by maintaining the peaceful co-existence in the matrimonial home." This intervention is a giant stride towards the reduction of violence in matters of litigation. An applause should be giving to this

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85 This Is Going Back To A Neglected Rule That The Judges Refuse To Be Using For Reasons Best Known To Them. The Exception To The General Rule (Mention Below Immediately) Is Complimenting A Testimony With An Oath. After Decades Of Saying Marriage Is Not A Property Issue And Hence Cannot Be Complimented By Oath. This Is The Popular Opinion Of Kano State Judges. The Question Now Is Why They Are Bringing It Now As A New Practice Direction, What Made Them Change Their Opinion Suddenly After Decades Of Using An Injurious Opinion.

86 Testimony Of One Witness Plus An Oath: The General Rule As Discussed Above Is That This Kind Of Testimony Is Only Accepted In Property Or Commercial Transaction Cases And Not Any Other. (Al- Malikiy, A.A., "AL-Maunatu Ala Mazahibi Alimil Madina", Published By Maktabatu Ainil Jami'a Lebenon, Vol. 2, (2016), P.360

practice direction because according to the outcome of a paper presentation,<sup>87</sup>

it revealed that the implementation was successful from February 19<sup>th</sup>, 2025 to date<sup>88</sup>, according to the presenter<sup>89</sup>, significant number of these type of cases were drastically reduced because of the oath taking and many cases were resulted to *Sulh* (arbitration) usually sought by the men. Secondly, the new practice direction has brought about serious reduction of time in adjudication and number of adjournments, i.e saves time in litigation. Thirdly, it has solved the problem of lack of evidence from the side of the woman to some extent, even though compensation is not being provided, at least the woman has been separated from the harm without being subjected to another harm. Fourthly, it provided for an opportunity to re-open a case under section 9 of the law when it comes to cases of maintenance of children of a divorced wife. Lastly, it has also brought about reduction of inheritance cases claimed by women in respect of their children from the guardians since according the practice direction custody of orphan's wealth is now vested on the court. Below is a table according to the presenter, showing the extent of implementation of the new rule that really contributed in solving /preventing MID issues relating to excessive burden of proof in areas of violence against women during litigation in matters of Islamic personal status.

**Experiences to share after the implementation of New Initiatives in the Adjudication of Gender - based violence cases in matters of personal status.**

S/N	Court	Cases of Gbv	Application Of The New Practice Direction	Facts
1	Qadi Aminu Khamis of Rimi S/C	Sadiya Nura Maje & 8 Others V Alasan Nura <sup>90</sup>	The court here relied on section 6(a) by asking the husband to take an oath. Oath was refused by the husband instead he resorted to <i>sulh</i> which was accepted by the court. Judge admonished the husband and gave warning	A case of lack of maintenance and sexual abandonment by the husband

87 Qadi J. A. Goshi, "Experience Sharing On The Implementation Of New Practice Direction No. 1 Of 2025 In Addressing Cases Of Gender-Based Violence In Matters Of Personal Status" Being A Joint Paper Presented At A Joint-Session With Sharia Court Judges From Kano And Kaduna States, On The Adjudication Of Gender-Based Violence Cases @ Bafra International Hotel, Kaduna, On The 14th June 2025. Organized By Development Research Project Centre (Drpc) In Collaboration With Centre For Islamic Civilization And Interfaith Dialogue (CICID), Bayero University, Kano (BUK) And Supported By Ford Foundation.

88 Saturday 14th June 2025 The Day The Said Paper Was Presented. The Session Comprised Of Sharia Court Judges Cut Across All Levels Of Court, Directors Of Sharia Court Of Appeal, Directors Of Training And Research Of Sharia Courts Of Both Kano And Kaduna. Find Attached The Attendance Of The Meeting As Annexed.

89 Qadi J. A. Goshi - Sharia Court Judge

90 CV/133/025 (Unreported), RIMI S/C

			against future occurrences. Saves time.	
2	Qadi Balarabe Surajo of Zakirai S/C	Saddika V. Abdullahi <sup>91</sup>	The court wholly relied on section 8 and made the husband pay accumulated financial maintenance previously ignored by the husband. The wife agreed to continue with the marriage after such payments are made and the husband was reprimanded.	case of maltreatment and lack of feeding
3	Qadi Aminu Khamis Of Rimi S/C	Talatuwa V. Amadu Uzairu & 6 Others Uzairu & 6 Others <sup>92</sup>	The court here relied on section 6(a) and marriage was terminated by a mutual divorce	A case of dissertation
4	Qadi Musbahu Alhassan Of Kore S/C	Hajara V. Musa <sup>93</sup>	The court here relied on section 6(a) by asking the husband to take an oath. Oath was refused by the husband instead he resorted to <i>sulh</i> which was accepted by the court. The husband was reprimanded and the wife agreed to continue with the marriage as provided by section 6(c)	a case of maltreatment and lack of maintenance.
5	Qadi Lawal Ibrahim Of Kachako Shari'a Court	Zainab Naabo Jirago V Abdulkarim Dan Achaba Langwami <sup>94</sup>	The court here relied on section 6(a) and marriage was terminated by a mutual divorce	a case of maltreatment
6.	Qadi Muhammad Sani Umar Of Falgore Shari'a Court	Uzaifa Khalidu Vs Dayyabu Idris <sup>95</sup>	The court here relied on section 6(a) and marriage was terminated by a mutual divorce	a case of beating and sexual starvation
7	Qadi Malam Bashir Bashir Kurawa Of Wudil S/C	Khadija Abubakar Vs	The judge invokes the provision of section 9 where the case of maintenance was re-opened and amount fixed was subjected to review to	case of lack of maintenance of children after divorce.

91 CV/133/025(Unreported), RIMI S/C

92 CV/137/025

93 CV/165/025

94 CV/70/25

95 CV/57/2025

		Sabo Lumansi <sup>96</sup>	consider current economic reality and the ex-husband has to comply since the children have grown up and was compelled to settle the previous debt.	
8	Qadi Muhammad Sani Umar Of Falgore Shari'a Court	Khadija Abdullahi Vs Naziru Amadu <sup>97</sup>	The court here relied on section 6(a) and marriage was terminated by a mutual divorce	Lack of maintenance
9	Qadi Jamilu Abubakar Goshi Of Sitti S/C	Bilki Abba Gala V. Mal. Mudi <sup>98</sup>	The court here relied on section 6(a) and marriage was terminated by a mutual divorce	Lack of maintenance
10	Qadi Mal Mubashir Abdussalam Hamisu Of Kabo S/C On		The court here relied on section 6(a) by asking the husband to take an oath. Oath was taken and wife divorced instantly by the court.	Beating and lack of maintenance.

Table I

The table above shows the positive impact of the new rule, nonetheless the positive development by law, still it has some defects that will hinder proper implementation and enjoyment of the provisions:

1. The taken of oath by a husband in a rebuttal to an unsubstantiated allegation of physical, oral abuse or maltreatment levelled against him by his wife is absolutely granted at the discretion of the court as provided by section 6(a), now where the court decide otherwise, then the wife has no way out than to be subjected to *khul'i* under section 5 of the law which is nothing more than the confirmation of the old practice of ignoring the harm completely.
2. The claims of the wife as provided under section 6 of the law is restricted to when it happens within the exclusive domain of the couples in accessible by any other person, so any other attack in other place like the family house of the husbands among his relatives where they cannot reasonably testify against him or outside his house in front of his neighbors who are scared of testifying against the husband especially if he is influential, by necessary implication, the wife cannot enjoy the provisions of section 6 of the law. This is a serious step back of the law

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96 CV/59/2025

97 CV/62/2025

98 CV/54/2025

which ought to provide a clause for exceptional circumstances like these ones.

3. Section 6(b) provides for the striking out of the case if the husband takes an oath. Now, the issue is, based on these provisions, it is by necessary implication that the MID we are talking about will still be ignored going back to the old unfavorable practice whereby the wife's only option is to go back and continue to live with and suffer the harm for as long as she can endure or resort to *khul'i*, either way the harm/injury is ignored. This is against the background of the study.

According to the provisions of Section 6(c) (i), where the burden of taking the oath is shifted to the wife in the event of husband's failure to take the oath, if the wife has taken the oath, the court will exercise its discretion and upon the application of the wife to instantly dissolve the marriage or caution the husband and put him on probationary warning. This will only be enjoyed by women who are either aware/conversant of the provisions Section 6(c)(i) or are buoyant enough to employ the services of the legal practitioner. It is the confirmation of other research and brought about by this study that majority of women patronizing these courts are ignorant of the basic matrimonial rights especially and let alone legal provisions meant to protect their rights<sup>99</sup>. Bearing in mind the adverse economic hardship and the feminization of poverty, and the basic fact that not all women are educated, a lot of them will not be able to benefit from the provisions of the law that reduces the excessive burden of proof on her since she doesn't know she has to make an application. The section also limits the power of the judge to provide justice to these categories of women who either lack basic knowledge of *sharia* protecting principles or not aware of the provisions or lack legal representation.

## Conclusion

The findings of this article are as follows: First, regarding the response of the Shari'a courts, it was found that the courts in Kano often fail to provide adequate space for victims, especially women, to prove MII due to the strict and burdensome evidentiary procedures. The Shari'a courts in Kano heavily rely on direct evidence, while MII is a type of harm that is difficult to prove without clear physical evidence. This leads to injustice, where many MII cases are ignored or resolved through *khul'i* divorce, which does not address the deeper issues faced by the victims. Second, the challenge in proving MII cases is mainly

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<sup>99</sup> Yelwa, M.I., "Darar Or Harm For Failure To Maintain A Wife : A Qur'anic And Juristic Approach On Marriage Dissolution", HR Mars (Exploring Intellectual Capital), International Journal Of Academic Research In Business And Social Sciences, (2017), Vol. 7, No. 8, P.522, Available At [Http://Dx.Doi.Org//10.6007/Uarb55/V7-18/3259](http://dx.doi.org/10.6007/Uarb55/V7-18/3259) Accessed On 08/08/2023 At 2:30pm

caused by the court's inability to accommodate indirect evidence, such as medical or psychological reports, which could strengthen the victims' claims. The current procedures are not responsive enough to these types of evidence, which often becomes a major obstacle in providing justice for victims. Third, a comparison with the Shari'a courts in Malaysia reveals a significant difference in responsiveness to indirect evidence. In Malaysia, Shari'a courts are more open to medical and psychological evidence, allowing victims to obtain justice despite difficulties in presenting direct witnesses. This highlights the importance of procedural reform in the Shari'a courts of Kano to adopt a more flexible and adaptive approach to indirect evidence. To enhance the effectiveness of Shari'a courts in handling MII, several important recommendations are necessary. First, the evidentiary procedures should be simplified by accepting indirect evidence, such as medical and psychological reports, to reduce the burden of proof on victims. Second, the courts need to adopt a maqāṣid al-shari'ah-based approach that is more responsive to non-physical harm, which will increase judges' awareness of marital rights and better protect spouses. Third, education and training for judges and lawyers are crucial to improve their understanding of emotional and psychological violence in marriage, as well as how to handle indirect evidence. Fourth, there needs to be an improvement in access to justice for women by simplifying the claims process and providing more accessible complaint mechanisms. Finally, by learning from practices in Malaysia, the Shari'a courts in Kano could adopt more flexible mechanisms to handle indirect evidence, ensuring fairer and more equitable justice for victims. These reforms are crucial to ensure that the Shari'a courts in Kano provide better protection for victims of MII and improve access to justice in the Shari'a court system.

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