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## Concept and Practice of '*Istibdāl*' among Contemporary Muslims in Nigeria: Are there Correlations with Qur`ān 4:20?

Khalid Ishola Bello \*

### Abstract

Islam allows restricted polygyny with four wives simultaneously hitherto the unrestricted practices among the Arab before the emergence of the new faith. Having unlimited number of wives is not peculiar to the Arab alone; the practice is common in many African countries. However, on the contact with Islam, every Muslim is required not exceeding four wives simultaneously. Non-Muslim husband of more than four wives would be legally compelled to reduce the number to four upon his conversion into Islam. However, in Nigeria, some Muslims exceed the stipulated number and seek justification from Qur`ān 4:20 and tagged the practice as *Istibdāl* or *Wahare*. Hence, this paper aims to find out if there are correlations between the '*Istibdāl*' and the verse in question. With the use of Interview, observation and literature review, the study identifies that the two different approaches to the '*Istibdāl*' are not on the same page with Qur`ān 4:20.

**Keywords:** *Wahare*, '*Istibdāl*', Polygyny, Marriage, Nigeria

### Introduction

Marriage is the only institution through which Muslims are legally allowed to satisfy their sexual desires. Numbers of conditions must be fulfilled to validate marriage contract in Islam; the fulfillment of those conditions is otherwise known as *ziwāj* or '*Aqdu Nikāh*'. Thus, *ziwāj* implies a process through which a man and woman by means of a particular form of contract ('*aqd*') are united to live together legitimately as husband and wife.<sup>1</sup> It reflects 'the practical bent of Islam for it combines the nature of both worship (*ibādāt*) and social relations (*mu`āmalāt*).

Islam permits man marrying up to four wives simultaneously. This practice of polygyny is not alien to Islam; many cultures across the globe equally enjoin the same practice. For instance, in Arabia, the immediate community of Prophet Muhammad (pbuh), during the *Jāhiliyyah* (pre-Islamic societies) ages, there was no limit on the number of wives a man

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<sup>1</sup> Hayatullah Laluddin, et.al "The Contract of Marriage and Its Purposes from Islamic Perspective" *Journal of Asian Social Science*; Vol. 10, No. 2; (2014): p. 139.

can marry at a time. He is could marry as many wives as he wishes. However, with coming of Islam, Muslims are restricted to marriage of four wives at a time. It must be noted that the Prophet is exempted in this case as he is specifically allowed to marry more than four under the provision of “*khālisatan laka min dūni al-Mu'minīn*” (specially for you, not for the (rest of) believers). (Q33:50)

Polygyny is socially accepted and widely practiced in many societies across the globe, particularly in Africa. The system predates Islam in West Africa and it is practiced by most ethnic groups, regardless of religion. Murdock, in constructing the World Ethnographic Atlas, closely studied the cultures of 565 ethnic groups across the continents. From these studies, polygyny was found to be widely practiced in 228 cultures<sup>1</sup>. The number of wives an African man has signifies his social economic status of high class and determines his influence in his community.<sup>2</sup> Multiple wives produce more children; and children make great contributions in maintenance of household, in farms and other business. They are source of honour and support at old age. Thus, unrestricted polygyny had been deep-rooted in West Africa long before Islam and Christianity were introduced into the region. This polygynous nature and culture of West Africans make Islam more appealing to them than Christianity. When Islam and Christianity were introduced to Africa in the 19 century, the African man would prefer Islam to Christianity because if he becomes a Muslim he could still keep up to four wives while if he embraces Christianity he could keep only one.<sup>3</sup>

In Nigeria, the situation of polygyny is not different; the three major ethnic groups, Hausa, Yoruba and Igbo, are known with marriage of multiples wives. For instance, in Hausa culture, early marriage and polygyny are very normal and common.<sup>4</sup> Hausa men see polygyny as an obligation, if they can afford it. When a Hausa man has more than one wife, the co-wives live in separate rooms within the same house.<sup>5</sup>

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<sup>1</sup> G.P. Murdock, *World Ethnographic Sample*, American Anthropologist, (1957): p. 686.

<sup>2</sup> J. Brown, “Polygyny and Family Planning in Sub-Saharan Africa” *Studies in Family Planning*, Vol.12, No.819, (1981): p. 323.

<sup>3</sup> T. A Falaye, “Polygamy and Christianity in Africa”, *Global Journal of Arts Humanities and Social Sciences*, Vol. 4, No.10, (2016): p. 20

<sup>4</sup> Luigi M. Solivetti, “Family, Marriage and Divorce in a Hausa Community: A Sociological Model”, *Africa: Journal of the International African Institute*, Vol. 64, No. 2 (1994): p. 261.

<sup>5</sup> J.O. Akande, “Law and the Status of Women in Nigeria,” *Report prepared for the African Training and Research Centre for Women*. (1979): np.

In Yoruba tradition, people see polygyny as part of being devout and a status symbol for men. Affluence rather than any other factor, usually determines whether or not a man has more than one wife. The wives of a Yoruba husband mostly live in a big compound and each wife gets her own quarters. Each wife is responsible for looking after her children and taking care of her quarters. The responsibility of looking after the husband falls on each wife on a rotational basis. The senior wife or the husband assigned each wife to this duty in turn.<sup>1</sup>

In pre-Christian Igboland, polygyny was a generally acceptable by men and women; it was the ambition of every Igbo man to marry as many wives as possible. With the introduction of Christianity, however, polygyny seemed to have run into difficulties. Christianity taught the doctrine of monogamy which was radically opposed to their polygynious practice. During the early period, it was an uphill task for Christian Missionaries to make converts among Igbo people who found it difficult to break with their traditional polygynious marriage institution. Groves referred to polygyny as the greatest obstacle to the acceptance of Christianity in Africa.<sup>2</sup> Many Igbo Christians are not faithful to the Christian monogamous teaching on marriage; after being legally married as Christians, they take to polygynious system.<sup>3</sup>

With the emergence of Islam into different places, one would expect Nigerian Muslims to adjust in line with Islamic regulations on the practice of polygyny such as limiting the number of wives to four simultaneously. Many are faithful to this restriction. However, there are many cases where Nigerian Muslims are fond of exceeding the limit set by Islam and marry more than four wives simultaneously under the pretext of what is known locally as *Wahare*. The learned on Islam among them seek justification in verse 20<sup>th</sup> of Chapter Four of the Qur'ān under what they tagged as '*Istibdāl*'.

### **Concept and Practice of *Wahare***

Linguistically, the word *Wahare* is a Hausa language which means female slave. A synonym to *Wahare* is *Kuyanga*, equivalent to '*Ammatu*

<sup>1</sup> Jelaludin Ahmed, *Polygyny and Fertility Differentials among the Yoruba of Western Nigeria*, M.A Dissertation in Demography, Australian National University, February (1985): p. 93.

<sup>2</sup> E.O. Egbah, 'Polygamy in Iboland (South-Eastern Nigeria) with special reference to polygamy practice among Christian Ibos', *Civilisations*, Vol. 22, No. 3 (1972): 437 (accessed from <https://www.jstor.org/stable/41229235> 02-07-2019)

<sup>3</sup> E.O. Egbah, *Polygyny in Iboland*, pp. 439-440.

in Arabic term.<sup>1</sup> Technically, the term is described from two perspectives.<sup>2</sup> One submission describes *Wahare* as a process where a Muslim husband with four wives bargain with any of his wives on retirement as wife to allow him marrying another one. The retired wife continues to live under his custody and enjoy his provision; they will only discontinue all forms of sexual relationships.<sup>3</sup>

According to another opinion, *Wahare* is applicable to marriage after the fourth where the only first four wives are considered legitimate. In this case, there would be no *aqdun nikah* (marriage solemnization)<sup>4</sup> on those wives under *Wahare* and such wives and their children would have no share from the estate of the husband in the case of death. As a result, husband is expected to have made excess provisions for them and their children, before his death, as compensation in advance of what they would suffer from the inheritance. More so, 'iddah *al-wafat* (waiting period after the death of husband) is not applicable to those wives as they would stay only for forty days while the first four wait four months and ten days according to Qur'ān prescription (Q2:234). The practice is likened to the marriage of female slave under the concept of *mā malakat 'aym nukum* (what your right hands possess). One may agree with this assertion considering the origin of the word *Wahare* as mentioned earlier.

Furthermore, some advocates of *Wahare* logically argued that a Muslim can marry more than four wives simultaneously. The argument is premised on their interpretation of the verse that permits polygyny. The verse in questions says:

... then marry such women as seem good to you, two and three and four; but if you fear that you will not do justice (between them), then (marry) only one or what your right hands possess; this is more proper, that you may not deviate from the right course. (Q4:3)

The particle "*wa*" in the verse is held for 'and' and not 'or' as popularly known. It is argued that Allah would have used '*aw*' (or) in place of "*wa*" which ordinarily means 'and'. Mathematically, 'and' could mean addition

<sup>1</sup> Interview conducted via mobile phone with Dr. Aminullah Adam El-Gambari, a seniors lecturer of Bayero University, Kano, on 17<sup>th</sup> June, 2019.

<sup>2</sup> A group discussion with 6 elderly Muslims men of age between 65 and 80 at Nurudeen Mosque, Old Shao Garage, Ilorin, Kwara State of Nigeria, on 16th June, 2019.

<sup>3</sup> Interview conducted with Dr. Sherifat Hussain-Abubakar, a senior lecturer, Kwara State University, Malete, on 17th June, 2019.

<sup>4</sup> The contract is sealed between the husband and concern woman; approval of *waliy* and payment of *sadaq* are not necessary.



such that 2, 3, 4 would be equal to 9. In the same vein, ‘and’ could mean multiplication under Probability Theory; hence, 2 and 3 and 4 would be 24. With these, a man could marry up to nine or twenty-four wives.<sup>1</sup>

Another argument relies on Q4:128 and the case of Sawda bint Zam‘ah, the wife of the Prophet who fortified her night for Aishah in fear of being divorced by the Prophet. The Q4:128 says:

And if a woman fears ill usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people’s) minds; and if you do good (to others) and guard (against evil), then surely Allah is aware of what you do. (Q4:128)

The circumstance for the revelation of the above verse was said to be on Sawda bint Zam‘ah who fears that the Prophet might divorce her and she preferred to remain as his wife and pleaded to forfeit her night for Aishah to retain her status of being a wife of the Prophet. The event was reported as follows:

Sawda feared that the Prophet may divorce her and said: “do not divorce me but retain me and give my night to Aishah”; the Prophet concurred and the verse reveals (then there is no sin upon them that they make terms of peace between themselves and reconciliation is best). Hence, whatever they reconcile on is allowed.<sup>2</sup>

Ibnu ‘Uyanah also reported through Az-Zuhri from Sa‘id Ibn al-Musayyab that Rafi‘ Ibn Khadij married Khawla bint Muhammad Ibn Muslamah and later lost interest in the marriage due to her old age or other reason. He wishes to divorce her and she said: “do not divorce me and take whatever you wish in replace. They remain on that reconciliation when the verse was revealed.”<sup>3</sup> Al-Bukhāri premises his argument on the report of Aishah that a man wished to divorce his wife for lack of sexual satisfactions and woman pleaded with some of her rights.<sup>4</sup> Whichever be the circumstance of the revelation, it is contended

<sup>1</sup> Interview conducted with Dr. Yakin Muftauddeen, a senior lecturer, Kwara State University, Malet, on 17th June, 2019.

<sup>2</sup> M.I. At-Tirmidhiy, *Sunan-t-Tirmidhiy*, (Beirut: Dāru lhyau-t-Turathi-l-Arabi, 1987), p. 281.

<sup>3</sup> M.A. Al-Qurtubi, *Al-Jami‘u li Ahkami’l-Qur‘ān*, (Cairo: Daru’l-Kitabi’l-Misriyyah, 1964), vol. 5, p. 99.

<sup>4</sup> I.I. Al-Bukhari, *As-Sahīhu-l-Jami‘* (Cairo: Daru-l-Fikri 2000) vol. 3, p. 231

that the above verse (Q4:128) allows a man releasing a wife due to old age or other reason, to marry another one in place.

In Nigeria, some Muslims are fond of marrying more than four wives. Some do so out of their negligence of law while some sought their proofs from the law. A vivid example is the case of Muhammad Bello Abubakar, popularly addressed as Masaba, a 92-year-old man from Bida town of Niger State, who married more than 100 women and describes such as a 'divine call'. Local Islamic authorities in Nigeria have been in conflict with him over the legal status of his plethora of marriages, who describe his atypical household as cult-like and out of step with Islamic law. According to his interpretation, the Qur'ān does not place a limit on number of wives a Muslim can marry simultaneously; rather, it is up to what his ability allows.<sup>1</sup>

As of 2008, when Masaba was 88 years, he had 113 wives out of which seven died and 20 were divorced, leaving him with 86 wives and 190 children. The Bida Emirate Council ordered him to divorce 82 of his 86 wives within 48 hours, or leave the State. By the expiration of this ultimatum, he refused to divorce any of his wives; rather he added to the number and vowed to marry more as long as he lives.<sup>2</sup>

The Niger State government ordered his arrest on the 15th of September 2008 and was also arraigned before an Upper Shari'ah Court in Minna same day. He was charged with insulting or exciting to contempt of religious creed, for keeping 86 women contrary to Sections 210, 383 and 386 of the Penal Code.<sup>3</sup> He pleaded not guilty to the three-count charge and discharged on bail after a month. While still in detention, some of his wives and children led by Hajiya Hafusat Bello, daughter of First Republic Minister from Kwara State stormed Minna and headed for Niger State House of Assembly and the State Secretariat to protest the detention of their benefactor. Hafusat, who queried the arrest and detention said:

Nobody in the family of baba is complaining; I have been married to him for over 20 years with four children and without any problem and I can also tell you that none of us - the wives or children - is complaining or lacking anything. So, If we - the wives - are not complaining; if our children and parents are not complaining, why is the state government, the Shari'ah

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<sup>1</sup> Accessed from [www.news.au](http://www.news.au) 12<sup>th</sup> June, 2019

<sup>2</sup> Baba Masaba: A Nigerian man with 86 wives dies at 93. Accessed from <https://www.bbc.com/news/world-africa-38795667> on 12<sup>th</sup> June, 2019)

<sup>3</sup> <https://www.bbc.com/news/world-africa-38795667> on 12<sup>th</sup> June, 2019)

Commission and the Etsu Nupe are complaining? Some of the people complaining have only two wives and they have no settled homes but here we are about 86 wives and over 100 children and we are not complaining; they should leave baba, we- the wives - and children alone.<sup>1</sup>

One of the children involved in the protest, Ma'ruf Bello, described their father as a God-fearing man; he said:

As a God-fearing man and who has been keeping all of us under the same roof peacefully for many years, I don't see any reason anybody, including government, should be worried about our family. They should leave us alone because nobody is capable of taking good care of us except baba.<sup>2</sup>

At the last count, Masaba died in 2012 having 130 surviving wives and 203 children. The youngest of the children was about one year old while seven of the wives were still pregnant.<sup>3</sup>

There are also many instances in Yoruba Muslim communities. A popular Nigerian Yoruba musician, Sikiru Ayinde Barrister, is a vivid example in this regard. According to various reports, at the time of his death on the 16<sup>th</sup> of December, 2010, he had 16 wives and 62 children.<sup>4</sup> Chief MKO Abiola, a politician and the winner of 1993 annulled presidential election in Nigeria died in 1998 and survived by 25 wives.<sup>5</sup>

The Alaafin of Oyo Empire, Oba Lamidi Adeyemi III is a prominent traditional king who is currently husband to seven wives.<sup>6</sup>

### **Exegesis of Qur'ān 4:20**

Allah says:

And if you wish to have (one) wife in place of another and you have given one of them a heap of gold, then take not from it

<sup>1</sup> <https://www.bbc.com/news/world-africa-38795667> on 12<sup>th</sup> June, 2019)

<sup>2</sup> <https://www.bbc.com/news/world-africa-38795667> on 12<sup>th</sup> June, 2019)

<sup>3</sup> Super polygamist, Bello Masaba left 203 Children, 103 Widows, <https://www.sunnewsonline.com/super-polygamist-bello-masaba-left-203-children-103-widows/>, accessed on 12<sup>th</sup> June, 2019.

<sup>4</sup> Nathan Nathaniel Ekpo, *Sikiru Ayinde Barrister's Family Mourns another Death*, the Nigerian voice (accessed from [www.nigeriafilms.com](http://www.nigeriafilms.com))

<sup>5</sup> Chief Abiola mourned by many wives, concubines and children, (<https://www.irishtimes.com/news/chief-abiola-mourned-by-many-wives-concubines-and-children-1.172214>)

<sup>6</sup> Alaafin of Oyo, *My wives are girls whose varsity education I sponsored*, (accessed from [www.punch.com](http://www.punch.com) on 9<sup>th</sup> December, 2018

anything; would you take it by slandering (her) and (doing her) manifest wrong? (Q4:20)

Linguistically, the word *'Istibdāl* originates from the word *badala* which means changing or replacement of one thing for another. Thus, the derivatives on the formula *Istaf'ala* are used to seek occurrence of an event or action to take place.<sup>1</sup> Hence, *'Istibdāl* (v. *Istabdala*) means seeking replacement or changing of one thing for another. The word also appears in some other verses in different forms with the same connotation. For example, Allah says: "Maybe, his Lord, if he divorces you, will give him in your place wives better than you, ..." (Q66:5). He also say: "... and if you turn back He will bring in your place another people, then they will not be like you." (Q47:38). Another says:

And when Our clear communications are recited to them, those who hope not for Our meeting say: Bring a Quran other than this or change it. Say: It does not beseem me that I should change it of myself; ... (Q10:15)

From the verses above, all the derivatives of the word *badal* connote changing of one thing for another where one does not exist anymore. It does not connote addition where the two things retain same status of existence. Therefore, the phrase "*wa'in 'aradumustibdāla*" can be simply translated as: "if you intend seeking replacement".

The Qur'ān exegetes interpret the phrase "*'istibdāla zawjim-makāna zawji*" as marrying a wife in replace of another wife who has been legally divorced. Below are submissions of notable ones among them: Imam al-Qurtubi said:

Having exhausted, in the previous verse, the law of divorce at the instance of the wife that the husband would take back the *mahr*; he follows it by the mention of separation initiated by the husband. He explains that if the husband wishes to divorce his wife without prominence and bad relationship, the husband has no right to demand any financial charge from.<sup>2</sup>

Submission of M. S. K. Hasan similar to the above says:

He explains in this verse the prohibition of harm (once she is not found guilty of misconduct and adultery); he (also) warns against

<sup>1</sup> Abduh Ar-Rajihi, *At-Tatbiq's-Sarfiy*, (Cairo: An-Nahdatu'l-Arabiyyah, 2010), p.106.

<sup>2</sup> M.A. Al-Qurtubi, *Al-Jami'u li Ahkami'l-Qur'an*, (Cairo: Daru'l-Kitabi'l-Misriyyah, 1964), vol. 5, p. 99.

cheating on (undervaluing) her right when the man intends her divorce and replacement with another wife.<sup>1</sup>

Imam As-Sa'diy describes *'Istibdāl* as: "Divorcing a wife and marrying another"<sup>2</sup>. In the view of Ibn Kathīr, he said:

That is, should any of you intends to disengage a wife to be replaced by another one, then he shouldn't take back anything from the dower he has given the former even if it were to be a heap of gold.<sup>3</sup>

At-Tabari interprets it as follows:

If you-believers-aim at marrying a wife to replace another one you are divorcing and you have given the one to be divorced a heap of gold as *mahr*; do not take anything from it.<sup>4</sup>

All the above and other exegetical submissions on the term "*'istibdāla zawjim-makāna zawji*" are unanimous. None of our sources interprets it outside the same context. Jurists and Scholars are fond of quoting this verse in reference to permissibility of unlimited amount of *mahr* (bride price). The conditional statement "*wa 'in 'aradtum*" (if you intend) signifies intention to carry out an operation similar to the verse on ablution which begins with: "*idhā qumtum ilas'-salāh*" (... when you rise up to prayer ... (Q5:6)); there must be a process to carry out the operation itself. Going with the above exegetical submission on the verse, one may argue that divorce is a process for replacing a wife with another.

### **Critiques on the Practice of *'Istibdāl***

The practice *Wahare*, according to one of the above submissions, is retirement of one out the four wives, to marry another. However, the concept of *'Istibdāl* according the verse (Q4:20) does not necessarily require having four wives; it may be applicable in the case of even one wife; that is, divorcing one wife to marry another one. Divorce would

<sup>1</sup> M. S. K. Hasan, *Fat-hu'l-Bayan Fi Maqasidi'l-Qur'ān*, (Beirut: Al-Maktabu'l Asriyyah, 1992), p. 243.

<sup>2</sup> A.N. As-Sa'diy, *Taysiru'l-Karimi'r-Rahman Fi Tafsiri Kalami'l-Mannan*, (Cairo: Mu'ssasatu'r-Risalah, 2000), p. 312.

<sup>3</sup> M.A. As-Sabuni, *Mukhtasar Tafsir Ibn Kathir*, (Beirut: Daru'l-Qur'āni'l-Karim, 1981), p. 211.

<sup>4</sup> M. J. At-Tabari, *Jami'u'l-Bayan fi Ta'wili'l-Qur'ān*, (Cairo: Mu'ssasatu'r-Risalah, 2000), p. 332.

take legal procedure of Islam and the divorcee would have to observe *‘iddatu’t-talāq* (waiting period of three consecutive months after divorce or three consecutive menstrual periods) and be allowed to re-marry if she wishes. In the case of *Wahare*, the retired wife who will continue to be under the custody of the same ‘husband’ observe no *‘iddatu* and she is deprived of another marriage. Hence, the *Wahare* is not on the same page with *‘Istibdāl* mentioned in the verse.

Historically, Arabs were known with unrestricted practice of polygyny before Islam. The coming of Islam put a number of regulations into the system such as: restriction of number of wives to four simultaneously (Q4:3); ban on combination of two sisters in marriage (Q4:23); combination of a woman and her aunt;<sup>1</sup> combination of a daughter and her mother simultaneously (Q4:23). Hence, had it been the practice of *Wahare*<sup>2</sup> as existed during *jahiliyyah* era and early period of Islam was subsequently allowed after the prohibition of slavery, Islam would have specified that also.

The argument that a Muslim can marry up to nine or twenty-four wives based on arithmetical analysis of the verse of polygyny takes particle ‘*wa*’ in the verse as ‘and’ and not ‘or’ as popularly believed. To interpret the Qur’ān with mathematical theory is baseless. This has long been debunked by number of scholars. For instance, Al-Qurtubi submits as follows:

These nomenclature- two, three and four- does not signifies permissibility of marrying nine wives as thought by whose perspective far from the Qur’ān and *Sunnah* and differ from the practice of predecessor of this *Umah* (Muslim community). He takes article ‘*wa*’ for addition and supports it with the marriage of the Prophet to nine wives under his authority (as husband).<sup>3</sup>

The verdicts of the Prophet to new Muslims who had more than four wives at time of their acceptance of Islam also confirm the above assertion. Malik, An-Nisā and Ad-DarulQutni reported in the *Muwatta* and two *sunan* respectively that:

<sup>1</sup> Muslim bn al-Ḥajāj, *ṣaḥīḥ Muslim*, (Beirut: Darul-Jayl, nd), vol. 3, p. 37.

<sup>2</sup> Based on the second meaning of the practice given above

<sup>3</sup> M.A. Al-Qurtubi, *Al-Jami‘u li Ahkami’l-Qur’ān*, vol. 5, p.17.

The Prophet (pbuh) said to Ghaylan bn Umayyah Ath-Thaqafiyy who embraced Islam having under him ten wives: ‘select four among them and release the rest’.<sup>1</sup>

Abu Daud also reported the case of Al-Harith bn Qays who said:  
I accept Islam and I have with me eight wives and I reported this to the Prophet and he said: ‘select four among them’.<sup>2</sup>

No book of *fiqh* at our disposal opens a chapter or heading for the practice for ‘*Istibdāl* to justify *Wahare*. It is a common pattern adopted by authors on Islamic Jurisprudence books to arrange their topics thus: *Nikah* (Marriage), *Talāq* (Divorce), *Mirāth* (Inheritance), *Buyu*<sup>c</sup> (Transactions) and *Jināyāt* (Criminality) and *Jihad* (holy war) whereas the concept of ‘*Istibdāl* to justify *Wahare* does not surface in their discussion.

Regarding Q4:128, the verse talks about circumstances under which relationship between a husband and wife becomes strained for reasons beyond their control. Both parties seem to be helpless in the matter. However, their mutual bitterness makes it likely that they will fail in fulfilling the rights they have on each other. For example, a husband does not have amorous feelings in his heart which may due to her ugliness or old age while the husband is still handsome and active. Thus, obviously, the woman cannot be blamed in any way for what she is, nor can the man be censured for whatever he is.

The earlier verses of *Suratu’n-Nisā* (Q4:3- 4) dealing with polygyny speak about limitation of maximum number of wives, the rights of *mahr* and the conditions of justice and equitable treatment for marrying more than one wife. However, it may appear impossible to fulfill these conditions in certain cases. For example, if one’s wife is barren or she has lost attraction for him or she is no longer fit for conjugal relationship, some questions arise when he marries second wife, such as:

- Is it compulsory on the husband to show equal inclination towards both wives in term of love or conjugal relation?
- If the above is not possible, does justice require that one should divorce the first wife before marrying the second?

<sup>1</sup> A. U. Abu’l-Hasan Ad-Darulqutniy, *Sunanu’d-Darulqutniy*, (Beirut: Daru’l-Ma’rifah, 1966), vol. 3, P. 270.

<sup>2</sup> S.A. Abu Dawud, *Sunan Abi Dawud*, (Beirut: Al-Maktabatu’l-<sup>c</sup>Asriyyah), vol.2, p. 272.

- If the first wife does not wish to part with her husband, would it be not justifiable to give up some of her rights to prevent divorce?

These questions are the focus in Q4:128. The verse signifies that when the wife fears that her husband is steering away from her or deserting her, she is allowed to forfeit part of her rights, such as provisions, clothing, dwellings and so forth and the husband is to accept such concessions from her. Hence, there is no harm if the two parties agree to such concessions. This is why Allah said:

...then there is no sin upon them that they make terms of peace between themselves and reconciliation is best...(Q4:128)

This means that reconciliation is better than divorce. With this, there is no justification in the verse for marrying more than four at a time. In the case of Sawda, it is illogical to argue that the Prophet intended 'Istibdāl since the marriage of Aishah preceded that of Sawda and no record shows the plan of the Prophet to marry another wife in place. Marriage of the Prophet to more than four wives is under the provision of "*khālisatan laka min duni 'l-mu'minin*" (specially for you, not for the (rest of) believers). (Q33:50) as earlier mentioned.

More so, the practice of 'Istibdāl lacks universality as it is not common in many places which ought to have attracted attentions of various researchers throughout the globe. Our findings via available sources to our disposal have not shown any thesis, dissertation or research work on 'Istibdāl (as *Wahare*) as they are common with other interpersonal issues. Interestingly, In Yoruba community, the argument on *Wahare* is always raised in defense of *Alfas* (Muslim clerics) who marry more than stipulated limit; whereas, in the cases of musicians (Sikiru Ayinde Barrister, for example) and politicians (MKO Abiola, for example), the argument is definitely not tenable. Islamic law is for all and sundry. The excuse given to *Alfas* ought to have been given to others if such law exists.

If 'Istibdāl is to retire any of the first four wives, 'what should be the share of a retired wife(s) in the estate of the one who retired her after his death'; 'on what basis should he be continuously making provisions for her sustenance after retirement'. These are some of questions begging for answer. The share of every eligible heir has been determined



in the Qur'ān, Sunnah and other sources of Law; none of those mention the position of the retired wife(s). No *fiqh* book has spelt out the duties and rights of the couple during and after the retirement.

### **Socio-psychological Effects of 'Istibdāl or Wahare**

In a situation where oldest wife who probably is the mother of the oldest children, is retired for another young lady to take position, unresolved enmity would automatically comes up within the family. The retired wife and her children would never have mercy for the husband and the new wife and her children. This may extend to both physical and spiritual attacks among the members of the same family. However, Islam preaches love and intimacy within the family and frown against hatred and segregation of the family ties. Qur'ān is emphatic to condemn and cursed mischief in the land and cut off the ties of kinship. (Q47:22-23). Allah promises to associate with who keeps ties of his/her family and vis-vasa.<sup>1</sup> Segregation of the family attracts punishment in this world and beyond; while on the keeping family, long life span and economic prosperity are promised.<sup>2</sup> However, retiring a wife for another would install permanent enmity within the family till eternity.

In addition, if a wife who has been in company of his beloved husband for years is forced to retirement of her matrimony just to allow a young lady to take her place, she may be subjected to long-life psychological disorder. The psychological disorder characterized by persistently depressed mood or loss of interest in activity, causing significant impairment in daily life. The persistent feeling of sadness or loss of interest that characterizes major depression can lead to a range of behavioral and physical symptoms. These may include changes in sleep, appetite, energy level. This can also be associated with thoughts of suicide.

The retired woman may be under sexual discomfort which may lead her to *zinā* (adultery). *Zinā* is criminal offence which attracts corporal punishment from Islamic court based on the offender's status of being single or married beside the severe torment awaiting her in the Hereafter. However, if a woman who has long been enjoying sexual right under legal marriage suddenly retired on the premises of 'Istibdāl may indulge in *zinā* due to persistent call of nature.

<sup>1</sup> I.I. Al-Bukhari, *As- Saḥīḥu-l-Jamī'* (Beirut: Daru-l-Fikri, 2000) vol. 1, p.193

<sup>2</sup> Aḥmad bn Ḥambalī, *Musnadu 'l-Imām Aḥmad*, (Cairo: Qurtabah Foundation, nd), vol. 3, p.136.

There would be no trust in the family as the other wives may be watchful of their own retirement in replacement with other potential wives. Trust is one of pillars in human relation according to Krot and Lewicka that:

Trust is willingness to increase the resources invested in another party, based on positive expectations resulting from past positive mutual interactions. It is a conviction by both parties to never act in a way that brings detriment to the other party or to take advantage of their weaknesses. Trust is the decision to rely on another party in a risk condition.<sup>1</sup>

However, once a woman is forcefully retired and replaced with another woman there would be no trust within the family due to impression that the same husband can retire any other wife whenever he discovers other appealing ladies to him.

### **Conclusion**

From the forgo discussion, it is clear that Islam permits Muslims to marry up to four wives simultaneously and on no condition should he exceed the limit. It is equally permissible to marry another wife in the case of death or divorce of any of those four wives. In the case of divorce, all the stipulated procedures of Shari'ah must be followed. Once the *talāq* has been established, the rights and duties of husband and wife have been terminated. However, relying on the verse (Q4:20) to justify the practice of *Istibdāl* is a deliberate attempt of using the Qur'ān out of context.

To retire a wife without legal divorce to create non-existent vacuum for another wife is Islamically not acceptable as it is amount to injustice to the concern wife. The view that puts *Wahare* under the provision of "*mā malakat 'aymānukum*" (female slave) is also not correct as the practice of slavery has been permanently abrogated.

*Wahare* could then be seen as a remnant of a characteristically socio-cultural tradition of Africans pluralized marriage. Any attempt to legitimize it is to read into Islamic text (here *'Istibdāl*) an African tradition (*ādah*). Basically, *Ādah* (custom or societal norms) is recognized in Islamic law. The custom and practice of people must be considered in any matter where the law is not detailed, or whose verdicts

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<sup>1</sup> K. Krot and D. Lewicka: "The Importance of Trust in Manager-Employee Relationships" *International Journal of Electronic Business Management*, Vol. 10, No. 3, (2012) pp. 224-225.

are based on the *urf* and *adah* of the people who use them. However, it is unanimously agreed on by the jurists that if custom contradicts the explicit Qur`anic and hadith text, the customary rule would not be enforceable.<sup>1</sup> Such *adah* could not be accredited under the praxis of *al-Adah muhakkamah* (custom is to be enforced) simply because it goes against the Islamic law that limits the wives to four.

Considering sociopsychological affects which the practice of *wahare* or *Istibdāl* could cause in human society, its harm would outweigh its benefits and as a result, it negates one of the principles of Islamic legal system which says: “*preventing evil is better than attracting benefits*”.<sup>2</sup> Thus the benefit a husband gets from *‘Istibdāl’* cannot be quantified with the hardship the entire family and the society incur.

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