



The Shari'ah

الشريعة

YOUR LINK TO ISLAM

JAMAADUL UKHRAA 1432 / MAY 2011

SPECIAL ISSUE

THE MUSLIM MARRIAGES BILL...

M. M. B

A CHALLENGE TO THE QUR'AAN MAJEED

**300 ORGANIZATIONS, 500 ULAMA
REJECT MMB...**

THE HOLY QUR'AAN ...

VS

THE MMB ...

THE QUR'AAN MAJEED SAYS:

"And for men over them (women) is a rank." (Baqarah, aayat 228)

"Men are the rulers (appointed by Allah) over women...." (An-Nisaa', aayat 34)

Men's share of inheritance is double the share of a female (c4, v11)

The testimony of two women equals to the testimony of one man (c2, V282)

Men may marry up to four wives, but not women (c4, v3)

The right of Talaaq is vested in only men (c65, v1)

VS

THE MMB SAYS:

CLAUSE THREE:

Equal status and capacity of spouses:

"A wife and a husband in a Muslim marriage are equal in human dignity and both have, on the basis of equality, full status, capacity and financial independence, including the capacity to own and acquire and to dispose of them, to enter into contracts and to litigate."

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KNOWLEDGE IS LIGHT... WHAT YOU SHOULD KNOW ABOUT THE MMB!

All praises unto Allah, Most High. Durood and Salaams be upon Nabi Muhammed Salallahu alayhi wasallam.

The draconian so-called Muslim Marriages Bill which is going to affect every single Muslim in the country, was gazetted on the 19th January 2011. The main architects of the MMB is an organization called Uucsa.

Uucsa issued a booklet "MUSLIM MARRIAGES BILL – FREQUENTLY ASKED QUESTIONS" answered.

This article by the Jamiatul Ulama Gauteng is a response to Uucsa's booklet. May Allah Ta'aala make it beneficial. (Ameen)

Will the MMB open the door for courts to pronounce judgements or issue Fatwas on Shar'i Ma-saa'il?

Answer: A fatwa is given on the basis of Shari Law by a Muslim. Presently non-Muslim courts are issuing constitutionally based judgements. The MMB will permit Hindu, Jewish and Christian judges to issue rulings in the name of Islam and on the basis of Shar'i Law. Thus it is fair to say that non-Muslim judges will be giving Fatwa's!

By venturing into MMB, will the Shari'ah not be exposed to constitutional attacks?

Answer: Even if there is a fear that the Constitutional court may launch an attack against the Shariah, Muslims themselves will not be responsible for such an attack. We will not be held answerable by Allah Ta'ala. However, by voluntarily choosing to be regulated by the MMB which is in conflict with the Shariah, Muslims will be party to undermining The Shariah. Section 15 (3) cannot cited in isolation, it needs to be examined with section 15 (4). The constitution is supreme and very clear: It does not allow any system which challenges or overrides the Constitution. A personal contract between two parties cannot override the Constitution.

Does the MMB not allow for the appointment of a family Advocate who may be Muslim, non-Muslim, gay or lesbian?

Answer: When a non-Muslim or secular court appoints a family advocate who is gay, a lesbian or an atheist, it does not do so with the blessings of Islam. It does so in terms of the Constitution. The MMB is supposedly to reflect Islamic Laws. Islamic laws do not permit such evil persons as gays, lesbians, atheist to serve as family advocates.

If a matter does go to court, will a non-Muslim pass judgement on an Islamic issue?

Answer: Yes, a Hindu, Jew or Christian judge will have the right to issue Talaqs etc.! Whilst they may presently decree divorces, these divorces are null and void as the judges are not Muslims.

What if a judge issues a ruling according to his/her own interpretation of a particular clause in the Act, which may go against the Shari'ah?

Answer: Uucsa also accepts this numbing possibility. All that they can do is to promise that they will vigorously argue that two Muslim assessors be appointed to assist the judge.

What kind of framework does the Act operate within?

Answer: The Act operates within the confines of a man-made Constitution. Some of the Administrative Laws imposed by the MMB have no sanction whatsoever in Islam. If a person succeeds in going for Hajj without obtaining a visa or building a Masjid without a permit, Islamic Law will not impose any forms of fines, etc. A person will not be a criminal in the eyes of Allah Ta'ala. On the other hand the MMB criminalises Muslims and imposes fines and jail sentences if administrative procedures are not abided to.

Does the MMB prevent a seventeen-year old from making Nikaah?

Answer: Is the whole purpose and the whole objective of the MMB not to get recognition by the State for Islamic Marriages? Yet when a seventeen year old makes Nikaah, her Nikaah is not recognised by the MMB unless it is approved by a Minister. Seventeen year olds are not minors in Islam. Islam considers them to be full adults. The MMB changes the Laws of Allah and considers them to be minors.

Has the MMB outlawed polygyny?

Answer: The Muslim public will be shocked to learn that the original Bill drafted by Muslims attempted to totally outlaw polygyny! Uucsa, being an Ulama body, could do well by informing the public of the status of the Imaan of those who sought to outlaw Allah's Divine Law. Polygyny without any regulatory provisions and conditions is permitted by the Holy Qur'aan. Why should the MMB wish to nullify this freedom by attaching provisions and imposing conditions?

Will it be a criminal offence for any person to discourage people from registering their Nikaah?

Answer: Uucsa admits that the MMB is not completely Shar'i compliant and that the 'rights' conferred by the Act are not totally in conformity with Islamic Law. Thus, it is the right of every Muslim to discourage people from registering their Nikaah under this Act. Says Allah, Most High: 'The Mu'minoen, they are friends unto one another. They command one another to do good and prevent one another from evil'. Anyone seeking to prevent the Un-Islamic requirement of registering a Nikaah, is a criminal under the MMB.

10. Why will it be necessary to register a Talaq with the courts?

Answer: Firstly, there is no compulsion in Islam to register a Nikaah with anyone. A Nikaah is valid without any registration in the Eyes of Allah Ta'ala. Since there is no such compulsion to register a Nikaah, there is no need in Islam to register a Talaq with any court. Though there were always consequences flowing from Talaq, no such registrations were ever demanded by the Shariah.

11. Is inheritance not a consequence of marriage? Why is it not included in the MMB?

Answer: Inheritance is not included in the MMB because it is in conflict with the Constitution. From this we can conclude that the MMB is not seriously interested in forwarding Muslim Rights.

Will a secular court be empowered to decree an annulment of the Nikaah? (Faskh)

Answer: Yes, a Hindu, Jew, Christian or atheist judge will be empowered to decree an annulment of the Nikaah. If a non-Muslim judge decrees that the moon has been sighted and that the month of Ramadaan has ended, his ruling will not be considered valid. Likewise the annulment of an Islamic marriage by a non-Muslim judge, even if in conformity with the Shariah, will never be valid. Uucsa itself is making another promise that it will insist for the Judge to be a Muslim. We seem to be dealing more with promises than the present daft MMB itself.

Will an Imaam be fined R20 000 if he registers a valid Nikaah which does not conform to the provisions of the MMB?

Answer: Here too we find Uucsa making another promise by calling for the removal of this draconian clause. Such clauses were incorporated in the Bill from its very inception. Why did Uucsa not complain before?

Is the court given the right to divide the husband's property between the husband and the wife upon the dissolution of the Marriage?

Answer: This is pure Zulm! Zaid has a business in which he has invested one million rands. His wife 'assisted him' in running the business. There is no agreement between them. She helps him out of a sense of duty. According to the MMB, upon the dissolution of the Marriage, Zaid's wife, though she has invested not a single cent, will be entitled to half a

million rands, This is clear theft and Zulm and usurpation of wealth. Whilst the MMB speaks piously of respecting the sacredness of the Shariah, it contains such Haraam provisions.

Is the MMB the only viable legal option available? Are there any other workable alternates?

Answer: Whatever alternates may be formulated, it cannot be at the expense of mutilating the Shariah. It cannot entail Zulm. It cannot modify the Holy Qur'aan in order to accommodate legal man-made options, no matter how viable it may appear to be.

The MMB still has to go through various consultative stages. What if the final version of the MMB is substantially different from the current version?

Answer: The MMB was gazetted on the 19th January 2011. It took Uucsa almost an entire month to take the public into its confidence and to somewhat explain which clauses are 'un-Islamic'. Even then, we do not have a clear picture of exactly which clauses are non-negotiable. No one has an idea of what they mean when they use terms such as 'fundamental provisions that are un-Islamic' Uucsa, in the interest of honesty and transparency should inform the Muslims before engaging with Government as to what exactly the non-negotiable provisions are. Anything less than this is must be viewed with suspicion and is unacceptable to the Muslim public.

The MMB clique maintains that scholars such as Moulana Thanvi Rahmatullahi alayh had given the go-ahead for the Indian version of the MMB. Is this correct?

Answer: This is absolutely wrong and highly deceptive. Moulana Thanvi Rahmatullahi alayh merely said:

"If it (i.e. Heelatun Naajizah—a Kitaab) is accepted and enacted into law then in its enforcement there will be considerable ease."

This is all that Hadhrat Thaanvi (rahmatullah alayh) said. If Heelatun Naajizah is promulgated and it is made law, it will require a Waali (a proper Qaadhi Islamically trained Judge), totally independent of the country's laws and the ethos of the constitution, to enforce the Shariah as stated in Heelatun Naajizah. If the government here in South Africa accepts Heelatun Naajizah as law and appoints a true Waali to administer the Shariah as it is expounded in Heelatun Naajizah, not the present MMB, then we shall be the first supporters of such a move.

Furthermore, the following article appearing in the Arab News(21/62010) completely debunks the notion and the claim that the MPL of India is working perfectly in India:

Indian MPL ALKHOBAR: A visiting lawyer from the south Indian state of Andhra Pradesh has called on Muslims to set up their own arbitration councils to resolve family disputes.

Speaking to a select group of expatriates in the Kingdom on Sunday, Mohammed Osman Shaheed, the additional public prosecutor at Andhra Pradesh High Court, said high courts and Supreme Court were no longer delivering judgments in the light of Muslim Personal Law.

"This law has been confined only to legal books ... it is no longer in application. The majority of All-Indian Muslim Personal Law Board officials, too, have accepted this stark fact," he said. Elaborating his point, Osman Shaheed said: **"For example, if you take a case of divorce to the High Court or the Supreme Court, they will clearly tell you that where there is a conflict between the Muslim Personal Law and the law of the land, then the law of the land will prevail. And in almost all cases since independence, the judgments have been delivered in contravention of the Muslim Personal Law."**

Which Math-hab will the judges base their rulings?

Answer: The judges will not be compelled to follow any specific Math-hab. The MMB does away with the entire concept of the Waajib Taqleed.

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KNOWLEDGE IS LIGHT.. Continued from Page 2

UUCSA claims that the majority of Muslims support the MMB. Please comment

Answer: Firstly, Islam does not operate on the basis of "majority is correct". The Kuffaar are in the majority in the World, so does that make their Kufr correct? The majority of the U.N. supports Israel's theft of Palestinian land, so does that make the majority correct? Islam operates on Haq (The Truth). Secondly, much is said about "six out of seven leading theological bodies" of Uucsa who support the MMB. This is a sham. Out of the seven theological bodies which make up UUCSA, two bodies are based in one city — Port Elizabeth. They hardly have a dozen supporters and are yet shamelessly presented to the public as "leading theological bodies in the country!"

What about the issue of using unbecoming language by certain parties? Is this not in contravention of Islamic teaching of showing respect?

Answer: Showing respect is only possible when the guidelines of Truth, honesty, integrity and fairness are displayed. One does not show respect to a robber, a crook, a fraudster or a criminal. Sadly some proponents of the MMB deliberately are misleading the public. Take the issue of the project committee members who wished to outlaw polygamy totally. Ask any Aalim, what the Shariah ruling is with regards the person who makes this vile suggestion. Ask him whether anyone who wishes to outlaw the Divine Laws of Allah can be called a Muslim?

And then there is the issue of whether the Government wants the Bill or Muslims themselves. The Uucsa documents make it clear that Muslims wanted the Bill. Yet, the Ulama were informed on Sunday the 20th February at the Jamiat offices in Fordsburg that 'whether we (Muslims) like it or not, Government is going to pass the MMB.'

What about the argument that circumstances dictates that we should not expect to get a hundred percent Shari compliant MMB?

Answer: A traveller whilst making Wudhu is in danger of missing his flight. He washes ninety five percent of his limbs etc. - only his one foot is left. He runs off without washing it. Does it make sense to say that 'well he has washed ninety five percent and due to circumstances he should not be expected to have washed that left foot?' Take another example: A person woke up late for Sehri. He is in a hurry and he is hungry. He concludes his Sehri five minutes past the fixed time. Does it make sense to say that 'well, we should not expect his fast to be hundred per-

cent. Circumstances forced him to eat above the stipulated sehri time?' In short, certain things are non-negotiable in the Shariah. Uucsa should make it clear beforehand what the stage will be when they will walk out. When the ANC was negotiating with the Apartheid Government certain things were non-negotiable upfront. 'There would be no homelands, Mr Mandela would be freed, all political parties would be unbanned, elections would be based on a one-man, one-vote principle etc.'

These were some of the non-negotiables which were relayed to the Apartheid Government before the commencement of Codesa etc. Uucsa needs to inform us beforehand what the non-negotiables are!

What are the alternatives to the MMB?

We do not dispute that there are problems which are experienced by couples when they wish to dissolve their marriages. We strongly feel that we should rather focus upon setting up our own Islamic Marriages Forum in every major centre in the country. We spent tens of millions of rands on other projects. Setting up an Islamic Marriages Forum is much more important and would cost much less. These centres should be manned on a full time basis by trained and qualified Ulama. Whatever alternatives we seek must be within the ambit of the Shariah.

We humbly appeal to all the Ulama to study the MMB in detail. This is not an issue of just making 'husne-zann' on what others say. The MMB is going to affect each and every one. There is much propaganda by various feminist and modernist movements. If Government is insistent upon a MMB which is not Shariah compliant, we will not be, Insha-Allah held responsible on the Day of Qiyamah.

What if the Modernists and the Government override succeed in passing the MMB?

In Abdul Matullib we find an excellent example. When he requested his camels from Abraha the Yameni King who was on his way to destroy the Kaa'ba Sharief, the King was astonished and said:

'I thought you came to beg me not to destroy the Kaa'ba. Instead, here you are asking me for your camels.' Hadhrat Abdul Matallib replied nonchalantly: 'The one who's House it is, He will look after His House. The camels are mine; it is my responsibility to look after them.'

The One whose Islam and Shariah is will Insha-Allah, protect His Deen. We will not be answerable on the Day of Qiyamah for distorting the Divine Laws of Allah. May Allah guard our Imaan (Ameen)

AN OPEN APPEAL TO THE ULAMA!

Assalamu - Alaykum wa Rahmatullahi Wabarakatuh

Respected and honourable Ulama

You are well aware that Allah Subhanahu wa Ta'aala has chosen you for the protection and propagation of His Beautiful Deen. You are also well aware that no Nabi will come to earth ever again and since the doors of revelation have permanently closed, the twin mission of the Protection of Allah's Deen and its Propagation has been firmly and squarely placed on your shoulders. Thus did Rasullullah Sallallahu Alayhi Wasallam elevated you to a lofty pedestal by anointing you as the inheritors of the Ambiya. (Alahimus-Salaam)

Every Allah fearing Aalim will attest that the weight of this immense responsibility crushes all forms of unbridled joy and unchecked pleasure. Every Aalim is aware that before Nabi Salallahu alayhi wasallam departed from this temporary abode, he entrusted unto them a sacred trust - the trust to lead his orphaned Ummah on the right path.

The Ummah did not have the opportunity to study the Holy Qur'aan, the Ahaadith of Rasullullah Sallallahu Alayhi Wasallam and the Shariah. Allah Azza Wajal blessed you, the Ulama with the 'Ilm of Nabuwat. This 'Ilm is an Amaanat of the Ummah. This Amaanah is indeed a great fortune and a great boon which no wealth in the world can ever match.

The Ummah rely on the Ulama for the guidance

contained in the Kalaam of Allah Azza Wajal, the Ahaadith of Rasullullah Sallallahu Alayhi Wasallam and the Shariah of Islam. They trust the Ulama to lead them unerringly towards Allah Subhanahu wa Ta'ala's Pleasure and righteousness. They trust the Ulama to warn them whenever Islam is in danger. They have confidence that the Ulama will be truthful and honest with them in this regard.

Ulama did not become Ulama to enrich themselves. They did not become Ulama to feast upon titles or to achieve name and fame. They did not become Ulama to toy around with the Haq and to experiment with it and to search and scratch their brains in order to make Islam palatable to the wolves in sheep clothing seeking to devour it.

The Ulama became Ulama in order to court Allah's Pleasure. They became Ulama to protect the Divine Deen and if necessary to happily surrender their lives in the course of this lofty task, a task so weighty that it would break the backs of the mountains; a task so awesome that angels feared taking it on; a task so filled with goodness and virtue that Shaytaan promised that he would leave no stone unturned to mislead and deceive the Ulama.

As you all know, O respected Ulama, an Aalim is a brother to the Ummah, a father to it's children, a counsellor to shattered hearts and a guardian of it's Shariah. An Aalim bridges the span between the creation and the Creator. His knowledge lights up the pathway to Jannah and is a shield against the torments of Jahannam and the dark Qabr. An Aalim's heart and mind

is a treasure trove of the Shariah and the Sunnah. In the glow of the lamp of his knowledge, the Ummah sees Haqq from Baatil, right from wrong and Halaal from Haraam. This knowledge, accumulated systematically over many years, is an Amaanah of the Ummah to be discharged without fear or favour.

An Aalim is the greatest boon or the worst bane for a community. He is an unparalleled blessing or a spectacular catastrophe to his flock. He is a light and a beacon of hope and success, or a miserable wretch and an incredible curse for society and for his friends and followers. For their destiny of Jannah or Jahannam largely depends on his guidance.

In every era, Ulama were trialled and tested. It is Allah's Will that the Ulama of this country are now faced with an awesome test and trial, a trial which appears in the form of the Muslim Marriages Bill.

That much of this draconian Bill is un-Islamic and Kufr is even accepted by the most ardent of the MMB supporters.

Let's take a simple issue of gender equality which forms a cornerstone of the MMB. There is NO confusion, NO doubt, NO controversy or NO differences of opinion in the Ummah for the past fourteen centuries that gender equality is in violent conflict with the Nass-e-Qat'i of the Holy Qur'aan. Clause three of the MMB states clearly:

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“WE HAVE ENGAGED FOR THE LAST TEN YEARS...”

Why there is a need NOW to reject the un-Islamic, Kufr MMB...

The claims by the pro-MMB crowd that Muslims should not reject the MMB without engagement is a false claim. It is sheer propaganda destined to mislead the masses.

For the last ten years we have consulted and engaged with Government. Who can deny that those organizations who are against the MMB now, had even met with the Minister of Justice? Mountains of correspondences are available which proves that Muslims who are against the MMB engaged with Government.

We have only called for the rejection of MMB, after it became clear that the bill is going to 'regulate', change, modify and alter the Shariah.

Let alone the layman, even many Ulama have not seen the Bill or held it in their hands. Those few who have seen it have not properly understood what they are heading towards. Thus they easily get carried away by statements such as 'engagement is better than outright rejection.'

THE NAMES OF THE THREE HUNDRED ORGANIZATIONS...

26 April 2011

The Honourable Minister of Justice & Constitutional Development
Private Bag X81
Pretoria
0001

We, the under mentioned Muslim Organizations of South Africa:

- 1) Jamiatul Ulama Gauteng
- 2) Jamiatul Ulama Kwazulu-Natal
- 3) Jamiatul Ulama Eastern Cape
- 4) Jamiatul Ulama of South Africa
- 5) Mujlisul Ulama of South Africa
- 6) Heidelberg Ulama Council
- 7) Chatsworth Ulama Council
- 8) Islamic International Research Institute
- 9) AL-Jamaa Political Party
- 10) Islamic Unity Convention (Western Cape)
(The Islamic Unity Convention has 186 Constituency bodies under its umbrella. It therefore represents a substantial segment of the Muslim community of the Western Cape)
- (197) South African Muslim Women's Doctor's Association
- (198) Scholars of the Truth
- (199) Madrasatul Fuqara, Malabar, Port Elizabeth
- (200) Young Men's Muslim Association, Port Elizabeth
- (201) Young Men's Muslim Association, Benoni
- (202) Humphries Street Musjid Association, Port Elizabeth
- (203) Al-Musjidul Awwal, Tembeni, Ciskei
- (204) Kingwilliamstown Muslim Association
- (205) Queenstown Muslim Association
- (206) Banaatus Salihaat (Girls Madrasah), Malabar
- (207) Lajnatun Nisaail Muslima (Association of Muslim Women of S.A.)
- (208) Fountain of Wisdom, Johannesburg
- (209) Port Alfred Muslim Association
- (210) Kokstad Muslim Association
- (211) Camperdown Jamiah Musjid Association
- (212) Ansaarul Haq Crises Centre, Durban
- (213) Independent Group of Concerned Muslims of S.A.
- (214) Al-Banaatus Salihaat (Senior Girls Madrasah), Azaadville
- (215) De Deur Asaatizah Association
- (216) Jamiatul Aalimaatil Muslima (Council of Female Islamic Theologians)
- (217) Korsten Muslim Association, Port Elizabeth
- (219) Bloemendhal Jamaatul Haqq
- (220) Midvaal Muslim Women's Forum
- (221) The Esssential Maktab Project, Cape Town
- (222) Siratul Haq Islamic Association, Estcourt,
- (223) Bethlehem Muslim Association
- (224) Estcourt Muslim Women's Association
- (225) Malabar Muslim Association, Port Elizabeth
- (226) Madrasah Miftahul Uloom, De Deur
- (228) The Majlis, Port Elizabeth
- (229) Ottosdaal Muslim Jamaat
- (230) Madrasah Miftahul Falaah, Harding
- (231) Alice Muslim Jamaat
- (232) Fort Beaufort Muslim Association
- (233) Madibogi Islamic Centre, Mafikeng
- (234) Mayfair Muslim Association, Johannesburg
- (235) Kwazakhele-Zwide Muslim Association
- (236) Miftahuddin Islamic Centre, Bloemfontein
- (237) Madrasah Sirajul Islam, Athlone, Cape Town
- (238) Madrasah Islahul Banaat, Cape Town
- (239) Lichtenburg Muslim Youth Organization
- (240) Mooi River Muslim Society
- (241) Weenen Musjid and Madrasah Trust
- (242) Meyerton Muslim Association
- (243) S.A. Muslims
- (244) Know Islam
- (245) Tarbiyatul Makatib Isipingo and District
- (246) Mueenul Muslimeen, Orient Park, Isipingo
- (247) Nurul Islaam Masjid and Madrasah, Craige-burn, Umkomaas
- (248) Madrasah Bantus Salehaat, Delta Road, Isipingo Beach

- (249) Tarbiyat Publishers (The Association of Muslim Writers, Durban
 - (250) Effingham Islamic Society, Effingham
 - (251) Effingham Juma Masjid, Effingham
 - (252) Greenwoodpark Madrasah, Greenwoodpark, Durban North
 - (253) Madrasah Hamza Effingham, Durban
 - (254) Greenwoodpark Islamic Society, Greenwoodpark, Durban
 - (255) Darul Uloom Newcastle
 - (256) Al-Answar Madrasah
 - (257) Fernwood Majid and Madrasah
 - (258) Newcastle Muslim Community
 - (259) Madrasah Islamia Newcastle
 - (260) Islamic Information Bureau
 - (261) Islamic Da'wah Centre, Newcastle
 - (262) Islamic College Newcastle
 - (263) Huffaaz Association of S. A
 - (263) Volksrust Muslim Jamaat and Madrasah
 - (264) Baitul Qur'aan, Estcourt
 - (265) Darul Hikma Islamic Centre
 - (266) Rosedale Combined Islamic School
 - (267) Al-Faeooq High School (Estcourt)
 - (268) Umtchezane Islamic School (Estcourt)
 - (269) Mooi River Islamic Centre
 - (270) Cornfield Islamic Centre
 - (271) Wembezi Islamic Centre
 - (272) Tatazane Islamic Centre
 - (273) Khupane Islamic Centre
 - (274) Matatiele Mosque & Madrasah Trust
 - (275) Siratul Haq Trust
 - (276) Rabia Masjid Trust Drakensview
 - (277) Sabalalisa Iqiniso Dawah Academy
 - (278) Madrasah Tarbiyyatul Atfaal
 - (279) Weenen Dawa Centre
 - (280) Estcourt Mosque & Madrasah Trust
 - (281) Ar Raudhah Publication
 - (282) Danhauser Dawah Academy
 - (283) Melmoth M.M.T
 - (284) Paulpietrsburg M.M.T
 - (285) Nkandla M.M.T.
 - (286) Azaadville Daarul Uloom
 - (286) Emondlo M.M.T
 - (287) Harrismith Islamic Jamaat
 - (288) Qwaqwa Islamic Centre
 - (289) Harrismith Women's Organisation
 - (289) Ladysmith Musjid Masihul Ummat
 - (290) Anwaarul Islam, Linton Grange
 - (291) Ashrafiyya Islamic Centre, Chatsworth
 - (292) Islamic Research Organisation
 - (293) Muslim Lawyers Association
- hereby draw the attention of the Government of the Republic of South Africa to the following facts:

- (1) Section 7 (2) of the Bill of Rights states:
"The state must respect, protect, promote and fulfil the rights in the Bill of Rights."
- (2) Section 9 (1) of the Bill of Rights states:
"Everyone is equal before the law and has the right to equal protection and benefit of the law."
- (3) Section 9 (3) of the Bill of Rights states:
"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."
- (4) Section 15 (1) of the Bill of Rights states:
"Everyone has the right to freedom of conscience religion, thought, belief and opinion."
- (5) Section 15 (3) (a) of the Bill of Rights states:
"This section does not prevent legislation recognising:- marriages concluded under any tradition, or syste of religious, personal or family law; or (ii) systems or personal and family law under any tradition, or adhered to by persons professing a particular religion."

Section 15 (3) (b) states:
"Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution."

(6) Although fifteen years have lapsed since the adoption of the Constitution, the government has failed to enact legislation for the recognition of Muslim marriages. In so doing, the government has per-

petuated the inequality and injustice of the apartheid regime against a section of the population of South Africa, namely, the Muslim community. Although nothing prevents the enactment of legislation to recognize Muslim marriages, the government has failed in this obligation imposed on the state by the Constitution.

(7) We believe that the reason for this lengthy procrastination is twofold:

- (a) Apathy by the government
- (b) Confusion by the Muslim community in the procedure for recognition.

(8) The aforementioned confusion stems from the incongruous Muslim Personal Law bills drafted by the Muslim community. All models of MPL bills hitherto prepared are seriously flawed from both the Islamic religious and Constitutional perspectives. The conflict with the Islamic Faith renders the Muslim Marriages Bill totally unacceptable to the vast majority of the Muslim community, while the total conflict with the Constitution renders the Bill unacceptable to the Government.

(9) The rejection by the Muslim community of the Muslim Marriages Bill is confirmed by the intensive and extensive protests and objections of Muslim individuals and organizations of all spheres of life. The submissions made by law agencies and lawyers confirm the unconstitutionality of the Bill.

(10) In view of the stark conflict of the Bill with our religion as well as with the constitution, we strongly advise the government to scrap the Muslim Marriages Bill.

(11) Legislation of the Muslim Marriages Bill or even a modified version of it while unacceptable to the Muslim community, will impose on the state a huge and an unnecessary financial burden.

(12) We believe that the imbroglio created by the Bill can be solved in a simple and acceptable manner – acceptable to both the Muslim community and the state. The solution for the Recognition problem is simply to amend the current Marriage Act to the effect that:

All Muslim Marriages, monogamous and polygynous are recognized.

All Muslim marriages are out of community of property and without the accrual clause.

The parties may select any one of the matrimonial property regimes provided by the Act.

This slight amendment will once and for all solve the perennial controversy pertaining to the issue of recognition of Muslim marriages. The state too will fulfil its constitutional obligation of placing the Muslim community on par with the other sections of the population in this regard. In fact, in several landmark rulings, the Courts have recognized Muslim marriages. There is therefore no rational reason for the state to procrastinate in amending the Marriages Act to provide recognition for Muslim Marriages.

(13) With regard to consequences of legal recognition, the Matrimonial Property Act offers several matrimonial property regimes. One of the regimes is the Antenuptial Contract which excludes the Accrual Clause. This system satisfies the Shariah. Religiously inclined Muslims will naturally adopt this Shariah-compliant property regime. Muslims who are not of orthodox thinking, are free to adopt any property regime they desire.

(14) By effecting the aforementioned amendments to the Marriages Act, the Muslim community will be brought in line with the rest of the population of South Africa. The State will also have fulfilled its constitutional obligation of recognizing Muslim marriages.

CONCLUSION

For the adoption of the proposal we have presented, we see no rational, no logical and no constitutional impediment and objection.

The list of Muslim bodies presented above is not exhaustive. We are currently moving around the country talking to Muslim communities on this issue. As we proceed with our educational promo, more and more organizations are being enlisted to support this Proposal.

We trust to have your comments at your earliest convenience. *Thanking you. Yours sincerely, A.S. Desai*

Muslims Arise - Your Last Chance Why Say No to The MMB Muslim Marriage Bill (MMB)

- 1.) The secular courts will pronounce on Shari Ma-saail and issue 'fatwas' (decrees) which will be in the light of the country's constitution and subservient to the laws of the country.
- 2.) If a secular court decrees that the Nikah is annulled, then the Muslim husband will be compelled to accept it.
- 3.) The final arbiter in all cases will be the secular law, not the Shariah, and not even the MMB.
- 4.) The courts will be empowered to appoint any person whether male or female and whether gay or lesbian, non Muslim or Muslim to act as the "Family Advocate."
- 5.) The secular court will be empowered to decree Faskh (annulment) of a Nikah whereas such annulment is not valid in the Shariah.
- 6.) Issues pertaining to Faskh (annulment) of Nikah will be interpreted in the light of the Divorce Act.
- 7.) Nafqah (maintenance) will specifically be decided in the light of the secular law not according to the Shariah.
- 8.) The definition of "Muslim" given by MMB is so ambiguous that it will be the function of the secular courts to decide who is a Muslim.
- 9.) The MMB provides for the automatic imposition of its provisions on even Muslims who were married before MMB came into operation.
- 10.) If a couple does not jointly elect to be excluded from MMB within 36 months, the Act will automatically apply to the couple.
- 11.) According to MMB men and women have equal

rights.

- 12.) Nikah under the age of 18 is criminalised.
- 13.) A man who marries a second wife in contravention of MMB is guilty of an offence and liable to a fine of R20000.00 or a long jail sentence.
- 14.) The MMB compels Muslims who had concluded Nikahs long before MMB to register their marriages under the MMB, unless the parties decide not to be bound by MMB. If they so decide, they have to apply for exemption in the way prescribed by the Act.
- 15.) If a Muslim male wishes to enter into a second Nikah, then in addition to the requirement of having to apply to a court for permission, he has to incidentally have a written contract which will regulate his property.
- 16.) An Imaam will be fined R20000,00 if he registers a valid Islamic Nikah performed in accordance with the Shariah, if it does not conform to the provisions of MMB.
- 17.) Any parent, Imaam, Sheikh, Moulana or elder who advises their children, students, mureeds or any Muslim in general to abstain from MMB (i.e. after it has been enacted as law) will be sentenced to a fine or a prison term of one year.
- 18.) The secular Divorce Act will have overriding importance as far as the courts are concerned.
- 19.) MMB obliges the husband to register a Talaaq Baa-in which is an irrevocable Talaaq.
- 20.) In terms of MMB, the husband's Talaaq Baa-in will not be valid if he did not follow the provision of MMB.
- 21.) If the wife disputes the Talaaq e Baa-in despite the husband contending that he had issued such a Talaaq, then according to MMB the Talaaq is not valid.
- 22.) A Talaaq disputed by the wife will be valid according to MMB only if the secular court resolved the dispute and decrees the Talaaq valid despite the fact that the husband states emphatically that he has administered Talaaq Baa-in to his wife.
- 23.) The husband is required by MMB to institute

court action within 14 days after he has registered his Talaaq Baa-in in the way prescribed by MMB.

- 24.) A husband who does not register his Talaaq Baa-in is subjected to the zulm (cruelty) of a fine of R20000.00 or a lengthy jail sentence in Hell's hole.
- 25.) While according to the Shariah, a secular court's annulment decree is invalid, i.e. it is not a valid Faskh, MMB confers this right to the secular court.
- 26.) The 'Faskh' provision of MMB degenerated into a hilarious stupidity. This stupidity read "... a faskh granted upon the application of the husband ..."
- 27.) Khulah, for this validity according to MMB must be registered by a marriage officer, and both the man and woman must appear in front of the officer.
- 28.) The interests and welfare of the children will be decided in the light of secular laws, not in terms of the Shariah.
- 29.) The court is given the right by MMB to divide the husband's property between the husband and wife on dissolution of the marriage.
- 30.) According to the Shariah there is an order of priority to be observed with regard to custody of minor children in the event of dissolution of a marriage.
- 31.) According to the MMB, the court should consider the report of the non-Muslim Family Advocate concerning the welfare of minor children.
- 32.) MMB stipulates that Talaaq should first take place before a haraam civil marriage contract could be cancelled.
- 33.) Even if the husband has valid Shari reasons for refusing to issue Talaaq, MMB empowers the secular court to issue a decree of Faskh (annulment) to terminate the marriage regardless of the fact that such annulment is invalid in terms of the Shariah.
- 34.) MMB places the non-Muslim Minister of Justice in full charge of Muslim Marriages.
- 35.) MMB empowers the Minister to make regulations to imprison Muslims who contravene any of the insidious provisions of this haraam so-called Muslim Marriage Bill. **[Article by Mufti A. H. Elias]**

LOOK INTO THE MINDSET OF THOSE WHO DESIGNED THIS MUSLIM MARRIAGES BILL AND UNDERSTAND THEIR WILY OBJECTIVES

The Openly Stated Aim of the Muslim Marriages Bill – To Reform the Shari'ah.

To claim that the proposed Muslim Marriages Bill has a hidden agenda is incorrect. Agenda – Yes. Hidden – well not so hidden. In fact the modernist lobby are explicitly clear about the aims they wish to achieve via the Bill. The brief given to some of the Project Committee members can be gauged from the following. South African Muslim women striving towards a goal of gender equality should actively involve themselves in the process of refashioning Islamic law within the new constitutional dispensation. It is important that they participate in the South African Law Commission's investigation into Islamic marriages and related matters in order to ensure that their equality rights are in no way compromised in favour of religious and cultural freedoms and rights. In doing so they must ensure that they are actively involved in all legislation concerning religious custom and usage. Only then will they be in a position to ensure substantive equality between Muslim men and women.

(Gender Equality and Religious Family Laws in South Africa – Christa Rautenbach.)

As it will be seen below, they have at-

tempted to diligently carry out this mission of "refashioning" Shariah.

The following are quotes from or about Prof. Najma Moosa, member of the Project Committee.

Introducing Najma Moosa, and quoting her, Bibi Dhansay writes:

"Instead she became an academic lawyer, schooled in secular law, but specializing in an area of Islamic law called Muslim Personal Law, "an area which has and continues to be manipulated by male theologians much to the detriment of Muslim women".

[Imaan entails unquestionable belief in all the teachings of the Messenger of Allah, Sallallahu alayhi wa sallam, whether our feeble minds understand them or not.]

"While this point is debatable, Islam allows a man to marry up to four wives."

[To refer to an issue emphatically mentioned and encouraged in the Qur'aan as "debatable" is to put one's Imaan in danger.]

Introducing her, Bibi Dhansay writes: **Moosa is concerned about the youth and has written this book with them in mind, "whether we realize it or**

not, we are already losing our youth. The (present) religion is too difficult and restrictive for them to follow". Women must not be afraid of the word "change", says Moosa. "They must not be afraid to assert themselves."

[Islam is too difficult, is a burden, and has to change to the times!]

"While Islam does not provide women with equal rights to initiate a divorce, as I have said, it nevertheless provides them with equitable rights. Furthermore divorce, although permitted, is frowned upon. I therefore contend that this imbalance as far as any restraints on ending a marriage is concerned should be rectified in order to reflect this equity in considering any MPL legislation in South Africa in this regard."

"These are but first steps towards the full recognition of a reformed MPL as provided for in the Constitution."

[The reformed version of Shari'ah is provided for in the Constitution! Of particular note are the words "first steps". The Bill is just the first step. If

the Bill is enacted and becomes law, the ideal stage would be set for further "reforms" of the Deen of Allah Azza wa Jalla. The control of the Act would then be in the hands of the Courts who are bound to develop the Act in order to "promote the spirit, purport and objectives of the Bill of Rights". Concessions are being made in order to get the Bill passed. Once this is achieved, the Bill is out of the hands of the public, with all control handed over to the Courts. In order to see that the public bite the bait, and the noose of the snare fits neatly around the neck, the Bill is even softened in favour of the clergy to win their support. Once done, they could be dispensed with.]

"Although as yet unrecognised in South African law, MPL would need to be reformed in line with constitutional provisions, including equality, once it is so recognised. The right to have MPL recognised is therefore not constitutionalised. MPL therefore needs to be reformed before it will be officially recognised. Muslim women in South Africa suffer from various discriminatory practices with regard to religious divorce to which they are often denied access and/or are ignorant of their Islamic rights in this regard."

[Shari'ah will have to be first moulded to fit in with the Constitution.]

The Danger of the Muslim Personal Law – Muslim Marriages Bill

1. Shariat rests the rights of divorce in the hands of the husband. The bill wants it to rest in the judge's hand.
2. The right of divorce needs no confirmation by anyone. The bill wants it to be confirmed by the Kaafir judge.
3. A Shari divorce requires no ratification by any authority. The bill wants ratification by the non-Muslim judge.
4. One has to give-up the Shari method of divorce and go via the court of the land.
5. It will cost thousands, wastage of time, undergo gross embarrassment and wash dirty linen in public.
6. When currently the court does not recognise the Islaamic Nikah as legal, then what is there to annul?
7. Divorce by a Kaafir court to destroy the Shari Islaamic will.
8. The judge is governed by the non- Islaamic law of the land. The bill wants to invest the judge with Islaamic powers.
9. In non- Muslim countries, the secular court does not entertain applications for the annulment of a Shaari Nikah. This bill wants to give the secular court the power to annul marriages.
10. Muslims are not compelled by any law of our country to acquire the verdict of a secular court to confirm the Talaq which they issue.

Those pushing for the Bill are wilfully, intentionally and purposely trying to promote a false 'legal constraint' which is non- existent.

11. Engaging ourselves, in the case, Muftis from India to solve a non-existent problem in South Africa.
12. Generally judges in our country are trained in secular law and do not have any idea of Islaamic law. The bill wants to give rights to such judges who have no clue of Islaamic law.
13. Islaamic Shariat law is supreme. Whereas this country has a basic fundamental principle that the constitution of the land is supreme. The bill wants to enforce, endorse and implement that.
14. Islaamic law is codified, documented and ramifications exist. The bill is going to destroy all the above and allow non- Muslim judges to re-interpret Islaamic law.
15. Currently the bill is drawn up by mostly those who are not qualified in Shariaat laws – see the Islaamic qualifications of those on the working committee – then see point (8) and point (4) of solution in this paper.
16. Ulema were/ are not fully informed of the details of the Bill.
17. One must understand that the proposed Bill undergoes changes upon changes before approval.

Before voting on the Bill modifications can and will take place by:

- (a) Project committee;
 - (b) S.A. Law Reform Commission;
 - (c) Minister of Justice;
 - (d) Justice Portfolio Committee.
- Sadly, what the project committee is proposing is against the Shariat so one can imagine what will be the condition and state of the Bill when it goes through drastic changes in stage (b), (c), (d). Especially when there will be personal educated in secular law trying to add, subtract, modify and adjust the Bill to suit secular law, the constitution of the country and lastly in their minds is Islaamic law. Their mind set operates in that matter. In reality, a Bill may commerce totally Shariat compliant but because of the above mentioned stages the end result will be a totally un-Islaamic Bill, blasphemous in nature. Perceive the danger.
18. The judiciary is always reviewed, revised and modified. Thus the Shariah will face the same.
 19. The bill of rights in the constitution which in not Shari compliant will reign supreme.
 20. The constitution and the courts view on human dignity is against the Shariah and will be the law to be implemented.

(Mufti Ebrahim Desai – P3 – MPL – Al Mahmood Issue)

THE LEGAL OPTIONS WITHOUT COMPROMISING THE SHARIAH

1. All Muslim Marriages, monogamous and polygynous are recognized.
2. All Muslim marriages are out of community of property and without the accrual clause.
3. The parties may select the anti nuptial contract without the accrual, from the matrimonial property regimes provided by the Act.

SOLVING MARITAL PROBLEMS

1. Every major town and city should have centres manned full-time by qualified Ulama, who will specifically deal with marital problems.
2. Educate the relevant parties of their rights
3. Investigate the Shar'i rights violated
4. Attempt Reconciliation
5. Conduct hearings
6. Explain clearly the Shari consequences of Talaq
7. Explain the Masaa'il of Faskh
8. Issue a Talaq if the husband is errant and obstinately refuses to give Talaq.
9. No wife should be made to wait for more than six months.

OPEN LETTER TO ULAMA

Continued from Page 3

"Equal status and capacity of spouses: A wife and a husband in a Muslim marriage are equal in human dignity and **both have, on the basis of equality, full status**, capacity and financial independence, including the capacity to own and acquire and to dispose of them, to enter into contracts and to litigate."

Respected Ulama, this clause, you will readily admit, denies and defies Allah Tabaraka wa Ta'aala's Divine injunction:

"And for men over them (women) is a rank." (Baqarah, aayat 228)

"Men are the rulers (appointed by Allah) over women...." (An-Nisaa', aayat 34)

Is it now not the responsibility of the Ulama to educate the hungry Ummah and the Imaams to discharge their duty to their ignorant Musallees about the dangers of gender equality and the teachings of the Holy Qur'aan which debunks this Western concept?

By Allah, wherever we The Jamiatul Ulama Gauteng have gone, we found a thirst, a craving and a yearning for Ulama to face them and directly explain to them the aspects of the MMB. They wish to clear their doubts and ask questions without any fear. This here is their right. This here is their Amaanah. A radio station, with all its re-

strictions and propagandistic public, is the argument that And no "headquarters" is going nature, can never adequately there is "another side of the to help him. fulfil the rights of the Amaanah. story".

And then, there is always a By Allah, what "other side of An Imaam is an Imaam, he is shortage of time not to speak the story" is there when Allah not a muqtadi. Even if he errs in about manipulation and propa- clearly states "And for man his Fardh Salaah, the Muqtadis ganda. No? Ask yourself how there is a rank over women"? Is have no option other than to often you heard the details of the other side of the story "And follow him. So much power the the gender equality clause for women there is a rank over Shariah has invested in him! It which rips apart the Holy men?" How close are we not to is the Imaams responsibility to Qur'aan and mutilates it's mes- Kufri! And the tragedy is that we educate the Musallees about sage? do not even realize it! How dead issues pertaining to Aqaa'id.

Whilst there are many Masaajid that have welcomed us, the Jamiatul Ulama Gauteng, with open arms to give lectures in order to discharge the Amanah of 'Ilm and the Amaanah of the Ummah, there sadly are few instances where such permission is denied.

Amongst the reasons cited is that the subject of the MMB is a controversial one. Let every Aalim ask himself what controversy is there in proclaiming that there is no concept of gender equality in Islam?

What controversy is there in citing the Aayat of the Holy Qur'aan and the relevant Ahaadith of Nabi Salallahu alayhi wasallam and the Masaa'il of the Shariah concerning gender equality to the Musallees who have a right to be educated? What controversy or confusion is there about the Haq of Islam and Allah's Kalaam and His Wisdom concerning gender equality?

Another reason for refusing permission to us for addressing the

Let every Aalim ponder deeply whether the denial of the mimbar to the Haq is not a treasonable offence and an affront to the rights of the Masjied? Let every Aalim reflect if he is not guilty of "Tasa'adu an Sabilillah" (barring people from the path of Allah) when he denies others the opportunity to educate the Ummah about the Quraanic concept of gender equality contained in the Holy Kalaam of Allah?

Today that sacred Kalaam is silent and cannot defend itself, tomorrow on the day of Qiya-mah that Kalaam will have the power of speech and will lay a case against those who sought to suppress its message and deny its value. Tomorrow that Aalim will have to face Nabi salalallahu alayhi wasallam and explain why he sought to hide and deny his Ummah his teachings regarding "gender equality". He will have to answer why he betrayed and denied his Muqtadis the Haq.

This is not the responsibilities of the Matawallees. And the Aqaa'id concept of gender equality as propounded by the MMB is nothing but a denial of the verdict of the Holy Qur'aan. And what a great calamity is it not for the Imaam to remain silent or to deny others the mimbar to openly and loudly proclaim the Haq?

As Ulama, you will appreciate that being a 2% minority does not give anyone the right to trample upon our Aqaa'id and our Holy Qur'aan.

As Ulama you will appreciate that being a 2% minority does not absolve us from spreading and protecting and propagating fearlessly the message of the Holy Qur'aan.

As Ulama you will appreciate that being a 2% minority will not absolve us from being answerable in the court of Allah Azza Wajal for not demanding our religious freedom.

As Ulama, you appreciate that we all have an immense responsibility to fulfil. Allah has warned us in the Holy Qur'aan:

Continued overleaf

INSIGHT INTO THE BILL – A SYNOPSIS

[NOTE: The Muslim Marriages Bill and Muslim Personal Law are one and the same thing]

Many Muslims, both Ulama and professionals, have contributed to the drafting of the proposed Muslim Personal Law bill. We do not question their intentions, and are confident that all had the best interest of the Ummah in mind. However, the time has arrived to seriously reconsider the involvement of the Ulama in the Muslim Personal Law. The need for this reappraisal arises from the fact that the Ulama were not fully informed of the detailed dynamics of such a dispensation.

The Ulama had extensive discussions with Muslim lawyers, and other professionals on the issue. Nevertheless, one crucial aspect was not fully canvassed, namely, the constitutional implications of the Bill. By the grace of Allah Ta'ala, the Ummah is not only blessed with Ulama, but also with professionals, who, together with being experts in their fields, have a deep sense of commitment to Islamic values. After discussions with experts in the constitutional law field, many Ulama felt the serious and urgent need to distance themselves from the proposed Bill.

For the benefit of the Muslim public, we wish to highlight a few salient points as it pertains to the interpretation and application of the Bill (if passed) which hitherto was not fully canvassed. It is these critical concerns which make it imperative for the Ulama and all Muslims to disassociate themselves from the proposed Bill. What you find below is a synopsis in a question and answer format which brings out some of the major concerns. Dear reader, it is possible that you may not understand the contents in one reading. We request you to ponder deeply and try to understand by reading the contents a few times. If you have any difficulty in understanding, you may contact us.

Q: We are given the impression that the MPL (Muslim Personal Law) will soon be recognized, kindly comment.

A: That impression is incorrect. The MPL has to pass many channels before it can be recognized. The following is a chart which explains the likely procedure.

- Project Committee: Prepare a proposal,
- South African Law Reform Commission: Examine the proposals,
- Minister of Justice: Evaluate the proposals in terms of the Constitution. The Justice Ministry might hand it over to the Justice Portfolio Committee if it thinks the project is worthwhile,
- Justice Portfolio Committee: Evaluate the proposal in terms of the Constitution and might submit a Bill to Parliament for approval,
- National Assembly and National Council of Provinces voting on the Bill. The parliament consists of the National Assembly which has 500 members and the National Council of Provinces which has 90 members.

At every step of the way, changes and modifications could be made to the Bill. It is likely that drastic changes could be made particularly at stage (d). Thus far, the MPL is merely at the stage where it has been given for public comment. The Justice Portfolio Committee will study the comments and submit their proposals to National Assembly to vote thereupon. If Muslims, at this present stage, object vehemently against the Bill, Insha-Allah, cognisance will be taken thereof and the Bill may be shelved.

Q: Will the proposals for the MPL be accepted as is or will there be changes?

A: There will in all likelihood be changes along the way. To expand on the answer above, according to procedure, the proposals will be handed over to the Minister of Justice. His advisers will evaluate the proposals in terms of the Constitution and they would make amendments to the proposals to be consistent with the Constitution or government policy. It is important to note that the Constitution is the Supreme Law of the Land; law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled. The proposal will then go to the Justice Portfolio committee for further evaluation in terms of its desirability and its constitutionality.

The lawyers in the Department of Justice and the members of the Justice Portfolio Committee take their constitutional mandate very seriously and they will make modifications, additions and subtractions to the proposals for the MPL. In brief, the MPL proposals will be modified so as to pass constitutional muster. It is clear that what one gets from the Project committee is not what he will necessarily get at the end. **A very crucial and important aspect which seems to escape all those concerned is that when this Bill is passed as law, it will definitely undergo changes over the years as cases are brought up in court and precedents are set. It will not be long when nothing Islamic will be left in the Act, except the word "Muslim".**

Q: What are some of the negative aspects of having the MPL recognized?

A: There are many negative factors of having the MPL recognized. The greatest danger is that it will interfere with Divine Law. The concept of perceived injustice between the spouses in the MPL can be challenged in the Constitutional court. According to the Shari'ah, only a male has the right to issue divorce. A female may challenge that at a constitutional level as that violates principles of equality. Section 9(1) of the Constitution states, 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex...'

Based on this section, even homosexuals have a claim for equal rights and privileges.

Q: As you are aware, the indigenous people of South Africa have their own customary laws, for example, Lobola,

etc. and that has been given importance by the courts on many instances. Is Shari'ah Law not analogous to African Customary Law? If Lobola can be recognized, why will Shari'ah Law, polygyny, etc. not be recognized?

A: There is a major difference between African Customary Law and Shari'ah Law. From a political point of view, both will not necessarily achieve the same level of recognition. African Customary Law is practiced by many South African citizens. Muslims on the other hand are in a minority.

Furthermore, in spite of the greater influence of African customary law, that too poses the threat of being challenged under the Constitution. An article appeared in the Sunday Times of October 13 2002, 'Commission hears views on Customary Law'. The commission was interviewing a contender Judge Lex Mpati for the post of deputy President of the Appeal Court of Bloemfontein. This is one of the most influential positions of leadership in the judiciary of South Africa. Mr Mpati was asked about Lobola, he responded by saying, 'it was not 'good law for primogeniture to continue.' It must also be understood that the attitude of the judiciary is always being reviewed and revised. Shari'ah Law will be at the mercy of such revisions. What guarantee do we have that Shari'ah will not be contaminated, chopped and changed?

Q: Will there be any difference if Muslim judges preside over cases of the MPL and there be Muslim assessors with a Muslim judge?

A: It should not be understood that a Muslim judge presiding over a dispute is going to issue an independent Shar'i ruling. Every judge is bound to follow the rules of the judiciary according to the Constitution. If the Muslim judge is not an Aalim of Shari'ah, then it is not expected of him to issue a ruling according to Shari'ah.

The Draft Bill made provision for Muslim assessors and that a ruling will be issued according to the majority opinion - two Muslim assessors or one assessor and the Muslim Judge. There is a likely constitutional problem with this provision.

Deciding on matters of law is the sole prerogative of the Judge. The assessors cannot do that. They will only decide on questions of facts. It is important to note that separation of powers is a pre-eminent principle in the South African Constitution. Under this conception, the legislature makes laws, the executive enforces the law and the judiciary adjudicates over disputes. The sharing of judicial power between the judge and assessors would undermine the powers of the judiciary.

Another point to consider is that, according to the Shariah, even if a Muslim judge passes a ruling in accordance to the Shariah, but he does it in the context of, or under the yoke of, a secular court, such a ruling is not recognised as binding in the Shariah.

Q: What is your advice to us, simple minded people regarding the MPL?

A: In view of the great dangers posed by proceeding with the MPL, we should distance ourselves from the proceedings and raise our voices against that. The laws of the Shari'ah are immutable and sacrosanct. We should not allow Shari'ah to be tampered with. Remember, the MPL must be understood in the context of the South African Constitution within which it will operate. The danger is that the Constitution is going to engage us rather than we engaging the constitution.

[This article was extracted from the Al-Mahmood #22, published by Madrasah Inaamiyyah, Camperdown]

OPEN LETTER TO ULAMA..

Continued Page 3

"And do not sell my Aayat for a small price."

Read again the Aayaat:

"And for men over them (women) is a rank." (Baqarah, aayat 228)

"Men are the rulers (appointed by Allah) over women...." (An-Nisaa', aayat 34)

These Aayaat are not for sale. Perhaps the committee will fire you for speaking the Haq. Maybe you will lose friends and be abandoned by family. Maybe you will become an outcast in Ulama circles. Let it be, let it be, for by Allah - these Aayaat are priceless. Do not sell them and become a candidate for Allah's Anger and Jahannam.

These Aayaat can never ever be abused because we are a 2% minority or because Government is determined to impose the MMB upon us whether we like it. Fear not the chastisement and the ridicule of being branded as cohorts and cronies and extremists. Neutrality is not an option and the politics of the day can never ever be an excuse for expunging the meaning and throttling and murdering the soul of these Aayaat. These Aayaat will lay a charge against us for they have a right to be preserved with respect, have a right to be caringly taught and have a right to be fiercely defended.

Respected Ulama, yes, we all have our own shortcomings; yes, no one is perfect and no one should consider themselves to be pure—but this does not give us a licence to remain silent when our Deen, our Qur'aan, our Islam is at risk of being distorted and mutilated.

We call upon Allah, Most High that we have given this message in good faith, not only to our Ulama brethren but to the Mutawallees as well as the Musallees and have hope in His Mercy that we will not be answerable for Kitmaan-e-Haq (concealment of the Truth) on the Day of Qiyamah.

May Allah Guide and guard us all. (Ameen)

Was-Salaam

CRY THE BELOVED UMMAH!!!

FOR THE PLEASURE OF ALLAH & HIS RASUL (SALLAHU ALAYHI WASALLAM)

JOIN THE JAMIATUL ULAMA GAUTENG'S PROTEST

CONVOY OF ISLAM

**5000 CARS FROM ACROSS THE COUNTRY
TO THE UNION BUILDINGS ON 31 MAY 2011!
DEFEND ISLAM**

**To join this protest and for further details:
Email us at: admin@thejamat.co.za**

**WE THE UMMAH REJECT THE DISCRIMINATORY
MMB!**

DEFEND ISLAM... DEFEND THE HOLY QUR'AAN...

The Government has asked you for your views.

Direct your objections to:

The Minister of Justice and Constitutional Development,
c/o Mr T.N. Matibe,
Private Bag X81, Pretoria, 0001
Fax: 086 648 7766 ;
e-mail: TMatibe@justice.gov.za

The expiry date for comments and objections is 31 May 2011.
Insha-Allah, you will be well rewarded by Allah for assisting his

**WE WOULD LIKE TO THANK THE THOUSANDS OF MUSLIMS
WHO HAVE ALREADY SENT SMSES, EMAILS AND LETTERS IN
PROTEST. KINDLY ENCOURAGE OTHERS TO DO SO AS WELL.**

**SMS YOUR OBJECTION TO THE
MUSLIM
MARRIAGES BILL BY:
Sending an sms to:
32015
With the words:
MMB I REJECT IT**

**ANYONE WHO IS ABLE TO DISTRIBUTE THE SHARIAH IN THEIR
AREAS, MUSAAJID, ETC. DO SEND US YOUR POSTAL DETAILS AND
AMOUNT WHICH YOU WILL EASILY BE ABLE TO DISTRIBUTE
admin@thejamat.co.za**

STATEMENTS FROM THE ARCHITECTS OF THE MMB

Here are some quotes from Ms. Farida Mahomed, also a member of the Project Committee.

“Presently, Muslim marriages are supervised by informal patriarchal judiciaries such as the Transvaal and Natal Jamiat al-Ulama, Sunni Jamiat al-Ulama, Muslim Judicial Council (Cape Town), and the Islamic Council of South Africa. The clergy applies Islamic Law that dates back to the 9th century schools of thought namely, Hanafi and Shafi’.

Modern scholars argue that the moral and ethical intent of Islam supports egalitarianism and social

justice. Yet, as laws are dynamic, the origins of these laws bear traces of misogyny [hatred of women] and patriarchy [male domination in the family].”

(Words in brackets and italics are ours)
[The Ulama and the matha-hib are backward, and the Qur’aan teaches hatred of women.]

“In conclusion, Committee members are constantly alerted to the fact that the Constitution is the supreme law of the Republic, and will continue to debate the issues bearing in mind that the challenge for the recognition of aspects of MPL is to ensure that

there is compatibility of such legislation with the Bill of Rights, particularly the equality clause.”

[According to her the Constitution has superiority over all other charters, including the Qur’aan, and therefore Shari’ah has to be reshaped to fit in with the Constitution.]

“...the male dominated clergy interpret the text according to their own understanding.”

[The Ulama are guilty of distorting the true teachings of Islam. The whole Muslim world is in misguidance, save a few modernists who understand the true Islam!]

“Yet, many debates conclude that considering socio-economic circum-

stances of society, traditional laws must be reformed, because unreformed laws would further enslave women to the whims and fancies of patriarchal interpretations of antiquated laws.”

[Once again, a call to reform the Shari’ah.]

These few brief quotes should serve as a sufficient eye-opener as to the real objective of the Muslim Marriages Bill.

May Allah Ta’ala save the Ummah from those who see a need to reform His Shari’ah.

[The above was taken from www.nashrulhaq.com]