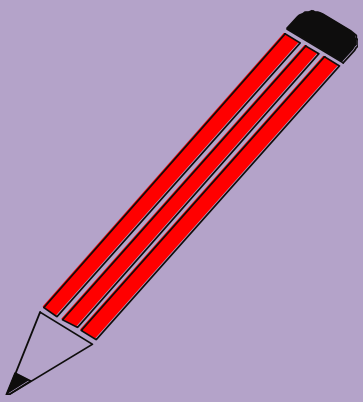
MMB REJECT THE KUFR MMB – MPL BILL!!



Jamiatul Ulama
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COUNCIL OF MUSLIM
THEOLOGIANS
ESTABLISHED 1970

THE KUFR 'MUSLIM' MARRIAGES BILL MADE EASY – UNDERSTAND THE KUFR AND OBJECT!!!

99% of the Muslim community, including professionals, do not have the haziest idea of what exactly the proposed kufr 'Muslim' Marriages Bill is all about. We are therefore receiving numerous requests from all over the country for a simple rendition of the kufr Bill to enable laymen to grasp the reality of the concocted kufr hash which this insidious measure fabricated to undermine Islam actually is. One brother writes: *"There is a lot of legal mumbo jumbo, and men like me would not even attempt a letter to the department even though it is waajib. Please make a draft letter that our brothers could fill in and have that sent back to the department (i.e. the Ministry of Justice)."*

In today's Bulletin, we present the kufr provisions of the kufr 'Muslim' Marriages Bill (MMB) in very simple terms for the easy comprehension of all and sundry. Study all the kufr intended to be imposed on Muslims in the name of Islam. We have unravelled the kufr 'mumbo jumbo' of the *KUFR MMB* to ensure that every Muslim who reads the insidious provisions will understand why it is Waajib on him/her to protest, object and dissociate from a satanic plot devised in America to undermine Islam.

MPL (Muslim Personal Law) has been invented by the Ford Foundation in the U.S.A. It has been customised into a variety of forms with a variety of names and hoisted onto Muslims in almost all Muslim countries with the active connivance of brutal kuffaar tyrants – the American surrogates – ruling the lands of Islam on behalf of their western masters. Their ignominious end is already written on the wall. The process of the destruction of these *munaafiqeen* has been initiated by humiliating flight of the Tyrant of Tunisia fleeing like a sewer rat down the sewer gutter.

THE KUFR PROVISIONS OF THE KUFR MMB

(1) According to the proposed Muslim Marriages Bill, the secular courts will pronounce on Shar'i masaa-il and issue 'fatwas' (decrees)

which will be in the light of the country's constitution and subservient to the laws of the country. Thus, the MMB defining courts says:

"court" *means a High Court of South Africa, or a court for a regional division as provided for in section 29(1B) of the Magistrates' Court Act, 1944 (Act No.32 of 1944)"*

In terms of MMB, the secular court will take over the functions of the Ulama of issuing Fatwa on matters pertaining to Nikah, Talaaq, Hadhaanah (Custody), Nafqah (Maintenance), etc. But, according to the Shariah, the decrees of secular courts are not valid and have absolutely no effect. Thus, if a secular court decrees that the Nikah is annulled, then despite the invalidity of such decree in terms of the Shariah, the decree will have legal effect according to MMB, and the Muslim husband will be compelled to accept it.

(2) Any ambiguity in any 'Islamic' provision of MMB pertaining to Talaaq, will be resolved by the courts in the light of the secular *Divorce Act, 1979 (Act No.70 of 1979).* The final arbiter in all cases will be the secular law, not the Shariah, and not even MMB. Even the smattering of provisions conforming with the Shariah will be incumbently interpreted by the courts in the light of the Constitution, not in the light of the Shariah. Besides the fact that the interpretations of a secular court having no Islamic validity, the courts are all bound to interpret all aspects and provisions of MMB in the light of the godless constitution.

(3) 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". This appointment will be in terms of the *Mediation in Certain Divorce Act (Act No.24 of 1987).* The Shariah is completed extinguished in this process.

(4) The secular court will be empowered to decree *Faskh (Annulment)* of a Nikah whereas such annulment is not valid in the Shariah. *Faskh* in Islam is valid only if decreed by a Qaadhi or a properly instituted Shar'i Committee *(Panchayat)* in places where there is no Qaadhi.

(5) Issues pertaining to *Faskh (Annulment of Nikah)* will be interpreted in the light of the *Divorce Act.* Hence, a *baatil* annulment which is not valid in the Shariah will be decreed by the secular court.

(6) Issues pertaining to *Nafqah (Maintenance)* will specifically be decided in the light of the secular law, not according to the Shariah. Thus, MMB states:

*" **"maintenance court"** means a maintenance court as referred to in section 3 of the Maintenance Act 1988."*

(7) 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. For a detailed discussion on this issue, see our Bulletin No.3. If you have not received it, write for a copy.

(8) The MMB provides for the automatic imposition of its provisions on even Muslims who were married before MMB came into operation. If a couple does not *jointly* elect to be excluded from MMB within 36 months, the Act will automatically apply to the couple. If the husband wants to be exempted, not his wife, then he will not be granted exemption, and vice versa. For a detailed explanation of this draconian provision see our Bulletin No.1. Write for a copy.

(9) According to MMB, man and woman have equal status, whereas the Qur'aan Majeed directs: *"For men there is a rank above women."* The higher status of the husband is an obvious truth to all Muslims, male and female, who have any understanding of Islam. But, MMB provides for the rejection of the Shariah on this issue.

(10) Nikah under the age of 18 is criminalized. No Muslim under the age of 18 has the right to enter into Nikah, yet fornication is not a crime. Any Imaam/Sheikh/Maulana who performs the Nikah of a boy or girl of the age of 17 years 11 months will be in contravention of the Act and liable to a fine of R20,000 or a lengthy jail sentence. Rasulullah (sallallahu alayhi wasallam) performed the Nikah of Hadhrat Faatimah (radhiyallahu anha) when she was 16 years of age.

(11) A man who marries a second wife in contravention of MMB is guilty of an offence and liable to a fine of R20,000 or a long jail sentence despite the fact that Allah Ta'ala has granted men the full permission to marry up to four wives. A man will be allowed to marry a second woman only if the non-Muslim secular court or the non-Muslim Minister grants permission, and that too if the first wife consents. The first wife's 'consent' has been specifically engineered to block and cancel polygamy which Islam allows. No first wife will consent to her husband marrying a second wife.

(12) The MMB compels Muslims who had concluded Nikahs long before MMB to register their marriages under 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. Currently, Muslims are not encumbered with this hardship. They are not criminalized presently if they do not register their Nikahs nor are they required to apply for exemption under the present Marriages Act which applies to all citizens of the country. But MMB discriminates against Muslim by singling them out for this hardship.

(13) 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 incumbently have a written contract which will regulate his property. This too is a haraam encumbrance which MMB imposes.

(14) An Imaam will be fined R20,000 if he registers a valid Islamic Nikah performed in accordance with the Shariah, if it does not conform to the provisions of MMB.

(15) Any parent, Imaam, Sheikh, Maulana or any 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.

(16) The secular Divorce Act will have overriding importance as far as the courts are concerned. The MMB will be subservient to the secular Divorce Act, Maintenance Act, Mediation Act, and other secular Acts.

(17) MMB obliges the husband to register a Talaaq Baa-in which is an irrevocable Talaaq. The validity of such a Talaaq according to MMB requires two witnesses at the time of registration whereas Talaaq does not rely on witnesses according to the Shariah.

(18) In terms of MMB, the husband's Talaaq Baa-in will not be valid if he did not follow the provisions of MMB. In this scenario the Nikah will have ended according to the Shariah while MMB holds it valid. The Talaaq will be valid in terms of MMB only if it is served on the wife by the sheriff of the court whereas according to the Shariah these requisites are nonsense. Talaaq Baa-in is valid and terminates the Nikah without witnesses, without execution by the non-Muslim sheriff

of the non-Muslim secular court, and without the other baatil paraphernalia required by MMB.

(19) 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. This incongruity is preposterously stupid. Despite a husband issuing Talaaq Baa-in in clear and unequivocal terms, MMB says that it is not valid simply because the wife disputes it. Thus, MMB dictates that the couple should continue a relationship which according to Islam is adulterous.

(20) A Talaaq disputed by the wife will be valid according to MMB only if the secular court resolves 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.

(21) 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. The application is to obtain a decree from the kaafir court confirming the dissolution of the Nikah by way of Talaaq. Furthermore, the application must comply with the rules of the secular court.

(22) A husband who does not register his Talaaq Baa-in is subjected to the zulm (cruelty) of a fine of R20,000 or a lengthy jail sentence in Hell's hole. Just imagine the kufr of this MMB! R20,000 fine or perhaps 5 or 10 years in Red Hell (Rooihell) for not registering a Talaaq!!! This is MMB in action if and when it gets enacted. *(By the way, 'Rooihell' is a famous jail in Port Elizabeth).*

Currently the law does not require Muslims to register Talaaq, hence the cruelty of the R20,000 fine does not apply.

(23) 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. Thus, while the wife will eternally remain in the Nikah of her husband, she will be conducting an adulterous relationship with another man whom she erroneously believes to be her husband. Her 'marriage' to the other man in terms of the Shariah will not be valid, and the children she begets from the adulterous relationship will be illegitimate.

(24) The *'faskh'* provision of MMB degenerates into a hilarious stupidity. This stupidity reads: *"...a faskh granted upon the application of the husband..."* This absurdity is indeed laughable and displays the density in the brains of the molvis and sheikhs who had assisted in the drafting of the kufr bill. A *Faskh (Annulment)* application is made by *only a woman* , the wife, not by the husband. If the husband wishes to end the Nikah, he only has to pronounce Talaaq. The Shariah does not provide for *Faskh* application by a husband.

(25) *Khulah*, for its validity according to MMB must be registered by a marriage officer, and both the man and woman must appear in front of the officer. The Shariah ordains that *Khulah* is valid if both husband and wife agree to end the marriage in lieu of the wife paying the husband a sum of money which should not exceed the mehr amount.

(26) According to MMB, the secular law Acts will apply regarding the welfare of minor children. The interests and welfare of the children will be decided in the light of secular laws, not in terms of the Shariah.

(27) The court is given the right by MMB to divide the husbands property between the husband and wife on dissolution of the marriage. The court is empowered to effect a division of the husband's property in a manner which it deems equitable. But according to the Shariah it is haraam for the wife to claim anything of her ex-husband's assets. She is entitled to only maintenance during the Iddat period. Thus, the husbands wealth will be usurped – grabbed in haraam ways with the decree of the secular court.

(28) 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. It is haraam to deny custody to the rightful custodian without valid Islamic reason. However, according to MMB, the court has the sole right to assign custody to whomever it desires. Thus Section 10 (3) of the MMB states: *"....award or grant custody or guardianship to any person as the court deems appropriate, in all the circumstances."*

(29) According to MMB, the court should consider the report of the non-Muslim Family Advocate concerning the welfare of minor children. Obviously, it cannot be expected of a non-Muslim to be guided by the tenets of Islam. There is massive difference in the

Islamic concept of child welfare and the secular, western concept which MMB wants imposed on Muslims.

(30) MMB stipulates that Talaaq should first take place before a haraam civil marriage contract could be cancelled. This extremely insidious provision of MMB states:

"…the court may not dissolve the civil marriage by granting a decree of divorce until the court is satisfied that the accompanying Muslim marriage has been dissolved."

What this vile clause means is that if a man wishes to cancel the haraam community of property marital regime, he is obliged to first break up his home. He should issue Talaaq to his wife. The villainy and Satanism of this stipulation are absolutely revolting. Numerous Muslims, due to ignorance, have registered their marriages in community of property. This regime does not allow the estate of the deceased to be distributed in accordance with Allah's Law of Inheritance. During the subsistence of community of property an Islamic will is not valid.

After they have been made aware of this haraam system, many Muslims seek ways of cancelling the community of property regime. This is possible only by obtaining from a court a decree to annul the civil 'marriage'. While this is currently possible, MMB blocks this avenue and denies Muslims the right to cancel this haraam system. MMB seeks to achieve this satanic objective by stipulating that the husband in a happy marriage who desires to submit to Allah's Law of Inheritance should first issue Talaaq to his wife. Only after he has broken up his home, may the court dissolve the civil marriage. Indeed most evil and insidious is this haraam draconian provision of MMB. In fact, the whole MMB is evil, insidious and draconian.

(31) Even if the husband has valid Shar'i 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. The Nikah remains intact. In this regard, Section 13 (2) of MMB reads:

"In the event of the husband, for any reason, refusing to pronounce an irrevocable Talaq, the wife to the accompanying Muslim marriage is entitled to apply for a decree of Faskh in terms of this Act……"

Despite the husband being fully justified for refusing to issue Talaaq to his errant and misguided wife, MMB empowers the secular court to 'annul' the Nikah notwithstanding the fact that such 'annulment' has absolutely no validity in the Shariah.

(32) MMB places the non-Muslim Minister of Justice in full charge of Muslim marriages. In terms of MMB, the Minister has the right to effect changes, make and bend rules and provisions at will and according to his discretion. The Shariah is completely expunged and non-Muslim governmental authorities and secular courts will be in full control of all Muslim marital affairs.

(33) MMB empowers the Minister to make regulations to imprison Muslims who contravene any of the insidious provisions of this haraam so-called Muslim Marriages bill.

These are then the insidious provisions of KUFR MMB. Should anyone desire further clarification on any of these or any other provisions of KUFR MMB, he/she may write without hesitation. Now that you have understood what exactly KUFR MMB is, it devolves on you as an incumbent Islamic obligation to aid the Deen with your objection.

THE MUSLIM MARRIAGES BILL (MMB/MPL) IS CONSTITUTIONALLY AND ISLAMICALLY INVALID

The *Muslim Marriages Bill (MMB)* which has been "approved and recommended by the South African Law Reform Commission and adopted by the Department of Justice and Constitutional Development, and which has been officially released just today (18 January 2011), is in conflict with the country's constitution as well as with our religion, Islam. In this article we propose to examine just one provision of the proposed MMB. Provision 2 (2) of the bill reads:

The provisions of this Act apply to Muslim marriages concluded before the commencement of this Act, unless the parties, within a period of 36 months or such longer period as may be prescribed, as

from date of the commencement of this Act, jointly elect, in the prescribed manner, not to be bound by the provisions of this Act, in which event the provisions of this Act do not apply to such a marriage."

In simple terms this insidious provisions means:

(1) The provisions of the MMB automatically apply to all Nikahs (Islamic Marriages) concluded even before this Act (the MMB) had been enacted as law (assuming it does get enacted as such). This application is automatic. In other words it is imposed on all Muslims whether they like it or not. And, this imposition is based on religion which is unfair discrimination according to the Constitution.

(2) Any Muslim who does not wish to be bound by the provisions of the haraam, kufr MMB has to make a special application within 36 months from date of the MMB's enactment to be exempted from its provisions.

The effects of this provisions thus are:

* Initially, from moment of its enactment, MMB becomes a compulsory imposition and encumbrance on Muslims to the exclusion of all are racial and religious groups. Only Muslims are selected for this discriminatory imposition, and the discrimination is based purely on religion.

* If any Muslims is averse to this insidious provision, he is once again discriminated against. He has to undergo the hardship and the expense of submitting a specially prescribed application to have his Nikah exempted from the MMB provision. No other religious group in South Africa is affected by this provision. A Hindu or a Jew or a Christian or a member of any other religious persuasion is not required to apply to be exempted from this or any other provision to be excluded from MMB impositions or any other law. Again, Muslims are subjected to discrimination based on religion.

* If due to ignorance, unawareness or forgetfulness a Muslim does not submit the prescribed application for exemption, he becomes

automatically and unfairly encumbered with the unwanted provision. Purely because he happens to be a Muslim, he has to be alert – an alertness which is not required of any other citizen of the country. His ignorance or forgetfulness traps and saddles him with an unwanted provision which is inimical to his personal beliefs, thus curtailing his freedom of religion, belief and opinion as is enshrined in the Bill of Rights. This is pure discrimination based on religion which the Bill of Rights prohibits.

It should therefore be abundantly clear that Provision 2.2. of the MMB is unconstitutional since it violates section 9 (1), 9 (3), 9(4) and section 15 (1) of the Bill of Rights.

Section 9 (1) states: *Everyone is equal before the law and has the right to equal protection and benefit of the law.*

9 (3) : *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.*

9 (4): *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*

15 (1): ***Everyone has the right to freedom of conscience, religion, thought, belief and opinion.***

Provision 2.2 of the MMB is in gross violation of all these provisions of the Constitution. It is a draconian measure reminiscent of apartheid laws. The MMB singles out Muslims by virtue of their religion, and unfairly imposes on them a requirement of which citizens of other faith groups are free. The provision of opting out in a prescribed manner is an unfair imposition on Muslims who are averse to the bill. It is indeed preposterous to single out citizens and slap on them an unwanted imposition on the basis of their religion.

Legal logic required the opposite, viz., *those who wish to be saddled with the yoke of MMB should elect and apply in a prescribed manner to be bound by the provisions of the bill.* In that case, it would not have been unfair discrimination since it would be

the voluntary exercise of one's freedom of conscience, thought and opinion as granted by the Bill of Rights.

Provision 2 (2) is so glaringly in violation of the Constitution that it boggles the mind that the Minister of Justice, his legal experts, and the South African Law Commission have so dismally failed to recognize the conflict and the discrimination. Most assuredly this insidious provisions as well as many others of the MMB will face challenges in the Constitutional Court. With MMB, the government will be opening a pandora's box of constitutional headaches for itself. It is wrong, discriminatory, unfair and unconstitutional to penalise citizens with impositions on the basis of their religion. Simply because we are Muslims, we are required to submit to an 'opting out' provision of a bill to which we are averse.

Our very inceptional, vehement aversion for the bill, and our desire to be governed by the law of the country in exactly the same manner in which it affects citizens of the other faith groups, should have been an adequate educator for the entities involved in this inimical bill. It is lamentable that they have failed to understand this basic tenet of the Constitution – that what cannot be imposed on non-Muslim citizens may not be imposed of Muslim citizens simply because they happen to be Muslims, and simply because a section of the community desires it.

John says that he does not want MMB. Zaid also says that he abhors MMB and does not want it. But John is excluded from the yoke of MMB while Zaid is fettered with MMB because he is a Muslim. The state thus ceases to be a secular one. Its claims to being so ring hollow. The MMB exhibits apartheid tendencies in that it aims to discriminate against citizens on the basis of religion.

It is imperative for Muslims to make known their abhorrence for MMB and their objection against provision 2(2). in particular.

THE MPL BILL IS NOT THE *"SHARIAH"* NOR DOES IT HAVE *"SHARIAH CONSEQUENCES"*

Speaking on *Voice of the Cape* radio, Mr. Shuaib Omar, the Durban lawyer who has egregiously toiled to have the Kufr MPL Bill shoved down the throat of the Muslim community, commented: *"Once the bill is eventually enacted as law, it will not become obligatory upon prospective Muslim marriages and existing marriages. The bill is premised on the principle of 'choice', meaning that once the bill gets promulgated it will not be obligatory on every Muslim to be bound by the bill. One can be bound by the Shariah law or Shariah consequences, or stay out of the bill and opt for the secular options. The bill will not automatically bind the community."*

The greater part of this comment is simply a regurgitation of the obvious. It is palpably obvious that the bill if it gets enacted as law, cannot be forced on to unwilling Muslims for the simple reasons that Muslims too are citizens of the country, and the constitution does not permit any citizen to be discriminated on the basis of religion. In the same way as MPL cannot be legally foisted on to non-Muslims, it cannot be fettered to Muslims who reject it.

Besides the obvious fact stated by Mr.Omar, it is necessary to refute the inference he has drawn, and which he has subtly attempted to promote, viz. that the MPL bill is *"Shariah law"* and its effects are *"Shariah consequences"*. He further attempts to mislead the community with the notion that *'staying out'* or abstaining from the kufr provisions of the bill is tantamount to opting for *"secular options".* These inferences are furthest from the truth. The conclusions he is promoting in this regard are baseless.

The MPL bill is ***not*** Shariah law nor are its effects Shariah consequences. On the contrary, the MPL bill is a Bill of Kufr. Its provisions are in conflict with the Shariah. The kufr bill has been portrayed as being a 'shariah' bill with an outer 'islamic' veneer which is so transparent that only a totally ignorant Muslim will fail

to understand that this bill is insidious Kufr. The glaring conflict of this Kufr Bill with the Shariah has constrained even modernist persons and bodies to reject the bill. We thus find hundreds of Muslim organizations opposing the MPL bill.

Mr.Omar's suggestion that abstention from the Kufr MPL bill equates to opting for secular options is a dismal bamboozling attempt to win Muslim support for the Kufr bill. To refrain from submitting to this Kufr measure never means adoption of secular options as the lawyer abortively attempts to convey. Abstention from consuming haraam carrion certified as 'halaal', never means agreement to devour pork. Abstention from haraam and kufr is *Fardh (Compulsory).* Muslims are bound by Islam to abstain from haraam and kufr, and opt and adopt halaal.

With regard to the haraam, kufr, spiritual carrion which the MPL Kufr bill is, the following facts should be noted:

- The law will never and can never oblige Muslims to submit to the kufr provisions of the bill.
- Abstention from MPL kufr in no way whatsoever obliges Muslims to adopt haraam secular options.
- In the current legal scenario, *halaal* options – options which are ***not*** in conflict with the Shariah are available.
- Abstention from MPL Kufr automatically leaves Muslims unfettered and free from the encumbrance of the haraam/kufr provisions of the MPL Kufr bill.
- Abstention from MPL Kufr allows Muslims to fully regulate their marriages and their consequences to conform with Allah's Shariah.
- Adoption of MPL Kufr, legally binds the Muslim to submit to the kufr provisions of the bill, and to the kufr decrees of secular courts.

Thus, the reality is the exact opposite of the lawyer's propaganda. Whereas according to his convoluted understanding of the Kufr MPL bill, adoption of it is submission to the Shariah, and abstention is adoption of secular options, the truth is the other way around, namely, adoption of MPL Kufr is adoption of kufr, while abstention from it is submission to the Shariah – never is it the

adoption of secular options. Muslims should not be misled by the anti-Shariah propaganda of Mr.Shuaib Omar.

In the current law dispensation without MPL, Muslims are free – totally free – to govern their marriages and their consequences fully in accord with the Shariah. The law does not prevent a Muslim from contracting a simple Shar'i Nikah. The law does not criminalize a Muslim who Islamically marries more than one woman. The law allows Muslims to adopt all the rules of Talaaq, Iddat, custody, maintenance, inheritance, etc. without any interference. So when the current secular law allows Muslims to govern their marital affairs according to the Shariah, then what is the need for Kufr MPL? Let Mr. Omar spell out with clarity what are the legal obstacles, if any, which prevent Muslims from regulating their marital affairs according to the Shariah, and which in his opinion necessitate Kufr MPL as the 'lesser pork option'? Muslims of their own accord proceed to the secular courts for haraam secular options when they are dissatisfied with the Dispensation of Allah's Shariah.

Today, without MPL, Muslims are 100% free to act in conformity with the Shariah regarding all their marital and inheritance affairs. The state has given us this freedom. It is an enshrined constitutional right which Muslims have. But, lamentably many Muslim women barter away their Imaan on the advice of modernist lawyers who encourage them to set aside the Shariah and proceed to the secular courts to gain a large amount of carrion from their ex-husbands in the form of legally extorted 'maintenance'/alimony.

To this day neither Mr. Shuaib Omar nor any other proponent of MPL Kufr has been able to furnish a single rational Islamic ground for their support of MPL Kufr. They – all of these miserable promoters of the Kufr bill – have hitherto only confused ordinary Muslims with ambiguities, conundrums, incongruities and red herrings. It is their incumbent obligation to explain clearly how exactly are Muslims presently prejudiced without Kufr MPL, and how they will 'benefit' by sacrificing their freedom in the event of opting for MPL Kufr.

THE MPL BILL IS A KUFR DEVICE. IT IS IN CONFLICT WITH THE SHARIAH. IT IS THE WAAJIB DUTY OF MUSLIMS TO OPPOSE THIS PIECE OF TREACHERY PRESENTED IN THE GUISE OF THE SHARIAH.

ISLAM IS A LAW, PERFECTED AND COMPLETED, FOURTEEN CENTURIES AGO. IT HAS NO NEED FOR ANY NEW LAW TO 'IMPROVE' ON THE PROVISIONS OF ALLAH TA'ALA, NOR IS THERE ANY SCOPE IN THE SHARIAH FOR MEASURES SUCH AS MPL KUFR. THE QUR'AAN, REJECTING ALL INTERPOLATIONS SUCH AS MPL, DECLARES:

"This Day have I perfected for you your Deen, and completed for you My Bounty, and chosen for you Islam as your Deen."

THE HARAAM/KUFR MPL SNARE IS THUS NOT REQUIRED BY THE UMMAH.

EXAMINING THE MUSLIM MARRIAGES BILL - ITS UNCONSTITUTIONALITY -

DEFINITION OF MUSLIM AND THE OPT-OUT PROVISION

Providing some 'background' information in the introduction of the published Muslim Marriages Bill, the Department of Justice and Constitutional Development states:

"The Bill is applicable to persons who adhere to the Muslim faith who elect to be bound by its provisions. In other words, it contains an opting out provision for persons who do not wish to be bound by it."

There are two serious flaws in this averment relating to:

(1) The concept of the Muslim faith
(2) The opting out provision.

THE MUSLIM AND THE MUSLIM FAITH

What is the meaning of the 'Muslim Faith' to which the MMB applies? Defining 'Muslim' who is an adherent of the 'Muslim faith', Section 1 of the MMB under the heading of Definitions, says:

*"**Muslim"** means a person who believes in the oneness of Allah and who believes in the Holy Messenger Muhammad as the final prophet and who has faith in all the essentials of Islam (Daruriyyat Al-Din)"*

To determine whether a person is a 'Muslim' on the basis of the aforementioned ambiguous concept / definition, will prove a daunting or a well neigh impossible task for a secular court of law. Any person who denies being a 'Muslim' in the meaning of the MMB, cannot be compelled by the secular courts to be a 'Muslim' in the meaning of MMB. Any such attempt by a secular court will be a direct infringement of the freedom of religion, thought and opinion enshrined in the Bill of Rights.

There are numerous sects whose adherents claim to be 'Muslim'; who proclaim the Oneness of Allah, and who claim to have faith in all the essentials of Islam. But what constitutes 'essentials of Islam' to one sect, are not necessarily 'essentials of Islam' to another sect. The chasm of difference among the sects could be extremely wide and unbridgeable on essential doctrinal issues among the various sects.

The Justice Ministry and the courts will haemorrhage with headaches in the labyrinth of ecclesiastical and doctrinal issues to determine whether a person is a 'Muslim' or not in the meaning of MMB. Should the Minister of Justice decide that the provisions of the ACT are applicable to someone whom he believes to be a 'Muslim', despite the latter's denial of being a 'Muslim' in the meaning of the MMB, his decision will most certainly be challenged in the Constitutional Court in view of it being in breach of the Bill of Rights which enshrines the principle of freedom of religion, opinion and thought. Neither the Minister of Justice nor any secular court has the constitutional right to describe a person to be a 'Muslim' in the ambiguous meaning of the MMB's definition. Any such determination by a secular entity will be discrimination

against the person on the basis of one or more factors of unfair discrimination mentioned in Section 9 (3) of the Bill of Rights.

The MMB definition of *'Muslim'* is grossly defective and inadequate. What are the 'essentials of Islam'? Since there is no uniformity and consensus in this doctrinal element, no secular court will be able to decree that a denying person is a 'Muslim' in the meaning of Act. Thus, a person who is a Muslim, but denies being a 'Muslim' in the meaning of the MMB will automatically be excluded from the provisions of MMB without the legal compulsion of the opting out provision.

Despite being a Muslim, his/her constitutional right will entitle him/her to argue that as a citizen of the country he/she is on par with Jack and Jill respectively, who are non-Muslims and who are not bound by the provisions of MMB. Similarity of descriptive titles does not necessarily confirm similarity of faith and doctrine. Catholics, Anglicans, Methodists and the myriad of other sects all claim to be Christian notwithstanding their wide differences of belief and doctrinal tenets. Just as the state has no right to compel an Anglican to accept and believe in the doctrines of Catholics, so too the state has no constitutional/legal right to determine who is a 'Muslim' in the meaning of MMB.

Shiahs and Qadianis declare belief in the Oneness of Allah, and in the finality of the Prophethood of Muhammad (sallallahu alayhi wasallam) along with affirmation of what they believe to be 'essentials of Islam', but which differ violently from the Sunni concept of 'essentials of Islam'. While they profess to be 'Muslim', the Ahl-e-Sunnah brand them as *'kaafir'* (non-Muslim). On the other hand, the Barelwi sect which is a member of UUCSA (the so-called 'United Ulama Council of South Africa), brand the Deobandi Muslims *'kaafir'.*

Furthermore, according to some 'Muslims', the element of *'essentials of Islam'* is superfluous, and is not an integral constituent of *Imaan (Islamic Belief).* According to them, a 'Muslim' is a person who believes in the Oneness of Allah and in the Finality of the Prophethood of Muhammad (sallallahu alayhi wasallam). They do not subscribe to the element of *'essentials of Islam'.* And, according to some who profess to be 'Muslim', the doctrine of

'Finality of the Prophethood of Muhammad (sallallahu alayhi wasallam)' is not a requisite for being a 'Muslim'

It should be understood that the requisites of *'essential of Islam'* and *'Finality of Prophethood'* have different interpretations and meanings. Besides the difference of interpretation, they do not constitute integrals of the definition of 'Muslim' according to some.

Now that it is understood that the MMB definition of the term 'Muslim' does not apply to all persons who profess to be Muslim, the following averment of the Ministry of Justice is erroneous" *"The Bill is applicable to persons who adhere to the Muslim faith…."* There simply is no uniform, comprehensive definition for 'Muslim faith' nor for 'Muslim'. The nightmare which the courts will face will be bizarre.

THE OPTING OUT PROVISION

The Justice Ministry's statement: *"In other words, it contains an opting out provision for persons who do not wish to be bound by it."*, is misleading. In fact, it is half a truth. Section 2 (2) of the MMB states the *Opting Out* provision as follows:

"The provisions of this Act apply to Muslim marriages concluded before the commencement of this Act, unless the parties, within a period of 36 months or such longer period as may be prescribed, as from date of the commencement of this Act, jointly elect, in the prescribed manner, not to be bound by the provisions of this Act, in which event the provisions of this Act do not apply to such a marriage."

Firstly it is indeed surprising that that none of the legal experts advising the Minister of Justice could discern the glaring conflict of this provision with the Constitution. In our article No.1, we have already elaborated the unconstitutionality of this provision. We shall again briefly reiterate the explanation of the conflict.

This provision discriminates against those who profess to be Muslims. The discrimination is on religion, and this is unfair and unconstitutional in terms of Section 9 (3) of the Bill of Rights. It firstly slaps the deficient and ambiguous definition on all those who

profess to be Muslim despite not being Muslim in the meaning of MMB.

Secondly, it differentiates between Zaid (a Muslim) and John (a Christian) in that it imposes on Zaid the encumbrance of having to apply for the opt out to be valid for him, while John does not have to make any such application.

Thirdly, on the basis of religion, the state imposes on Muslims the MMB provisions while members of all other religions are exempted, hence they are not subjected to make application for opting out.

Fourthly, if a Muslim does not elect to opt out, perhaps due to being ignorant of the MMB provisions, or due to forgetfulness, etc., the provisions become automatically loaded on to him. He is consequently saddled with provisions which are anathema to him. Such imposition of belief by the state on a person is unfair discrimination based on religion.

For the provision to conform to the constitution, it should read:

"The provisions of this Act apply only to Muslims who elect in the prescribed manner to be bound by the provisions of this Act."

This simple provision will eliminate the two flaws explained although this does not mean that the other provisions are acceptable and not in conflict with the Constitution.

Consider the following scenario:

Zaid is a professed Muslim who had by design not elected to be exempted from the Muslim Marriages Act since he is convinced that it is his constitutional right not to submit to such election by virtue of him being equal with all other citizens. Since the state regards Zaid to be a Muslim, it prosecutes him for being in violation of some provision of MMA (Muslim Marriages Act). Zaid defends the action and proceeds to the Constitutional Court to prove that he is being discriminated against on the basis of his religion.

He argues that he is not a 'Muslim' in the meaning of the Act. The state and the court will become mired in intractable doctrinal issues in order to establish whether Zaid is a Muslim in the meaning

of the Act. The state will have to explain the *'essentials of Islam"* which is an integral constituent of the definition of 'Muslim' in the Act. It matters not who the state's expert 'Muslim' witnesses will be, Zaid with his expert witnesses will argue that according to his belief the '*essentials'* which the state tried to prove do not constitute part of his Islamic beliefs. In short, no one's conception of Islam can be forced on a person who has his own conception and doctrines. Neither the state nor the court can compel Zaid to accept the doctrines of another Muslim sect or of any other Muslim.

Provision 2 (2) is likewise unconstitutional in that it requires both spouses to jointly elect *"not to be bound by the provisions of the Act."* Here again, the beliefs of one spouse are imposed on the other spouse by the state, for the one spouse may be a 'Muslim' in the meaning of the Act while the other spouse is not. It is unconstitutional for a spouse to be at the mercy of the other spouse by denying him his constitutional right for his marital and any other affairs to be governed by the laws as they apply to all citizens of the country.

WHO WILL DECIDE WHO A MUSLIM IS?

The proposed MMB defines "Muslim" as follows:

"Muslim" *means a person who believes in the oneness of Allah and who believes in the Holy Messenger Muhammad as the final prophet and who has faith in all the essentials of Islam (Daruriyat Al-Din)"* **Note**: the words in brackets are also part of the definition as stated in the Bill.

Firstly, the aforementioned definition is unconstitutional in that it is in violation of the Bill of Rights, for it imposes a specific definition, thought or belief on a section of the citizens of the country, who profess to be Muslims. Section 15 (1) of the Bill of Rights reads:

"Everyone has the right to freedom of conscience, religion, thought, belief and opinion."

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, religion, conscience, belief, culture, language and birth."

If this Bill is enacted as law, it will mean that the state is imposing a specific belief/opinion on all those who claim to be Muslims while there are such 'Muslims' whose belief and opinion refutes this definition. The state has no right to prescribe religion and ecclesiastical issues to a group of citizens or to even a single person whose belief and conscience have a different concept of the term 'Muslim'. If the state imposes any faith system or code of belief on a section of the population on the basis of its individuals claiming to be Muslim, it (the state) will cease to be a secular democratic institution as the Constitution enshrines.

It is palpable that a small clique has hammered out this definition which the state is now attempting to hoist on to sections of the South African population, and this hoisting is on the basis of religion, hence it is flagrant discrimination against those Muslims who despite calling themselves Muslims do not accept the validity of the definition given in the Bill.

In that section of South Africa's population known as 'Muslim', there are many different sects and groups. We have Hanafis, Shaafis, Qadianis, Ahmadis, Shiahs, Modernists, Salafis, Barelwis, Deobandis, Ahl-e-Hadith, etc. In the ranks of these groups there exist a variety of concepts and interpretation. What is 'Muslim' to one sect may be 'Kaafir' to another group. For example, the Barelwis brand the Deobandis to be 'kaafir'. The Ahlus Sunnah brand Shiahs 'kaafir', and Qadianis and Ahmadis too are 'kaafir' according to the Ahlus Sunnah. Yet, all these sects/groups believe themselves to be 'Muslim"

Also, the doctrine of Belief in the Holy Prophet Muhammad (sallallahu alayhi wasallam) is a variegated concept with violent contradictions among the different sects. The same applies to the doctrine of Finality of Prophethood in the person of Muhammad (sallallahu alayhi wasallam). While one concept of these doctrines is kufr (disbelief) which renders such believers *kuffaar* (unbelievers) according to one group, it is not kufr according to another sect.

Then come the *Essentials of Islam (the Daruriyyat Al-Din as the Bill describes).* There is huge difference of opinion among the various Muslim sects on this issue. Some tenets will be 'esentials' to one sect while not so to another sect.

In the event of a dispute developing between a 'Muslim' citizen and the state in any litigation concerning any provision of the Bill (that is if it is enacted as law), who will decide whether the Applicant/Respondent is a 'Muslim'? This will be the onerous task of the courts. It will be the unenviable and daunting task of the secular court to unravel the mystery and to solve the conundrum: 'Who is a Muslim?' The judge will be seized with the task to examine all the threads in this colourful ecclesiastical and ontological tapestry of religion. Just imagine the following scenario:

Zaid, a Muslim marries a second wife without the permission of the non-Muslim Minister, or without the consent of the secular non-Muslim court. Presently, Zaid does not require consent from either the Minister or any court to enter into a second Nikah. Numerous Muslims are married to two wives, and even President Zuma is married to multiple wives. Under the current dispensation polygamy is not a crime nor is consent of any secular authority a requisite for a second marriage. However, in terms of the MMB, a man who concludes a further Nikah without the consent of the secular court is guilty of an offence and liable to a fine of R20,000. Despite this draconian, haraam MMB provision, Zaid enters into a second Nikah without applying to a court for permission.

As a result, Zaid is prosecuted and charged for being in contravention of the Act. In court Zaid argues that he is not in contravention of any Act because he is not a 'Muslim' in the meaning of the Muslim Marriages Act. Since he is a citizen of the country he is entitled to be treated fairly, justly and not be discriminated against on the basis of his religion, such discrimination being unconstitutional, hence unlawful.

Zaid further argues that since his first Nikah is not registered in terms of the Marriages Act (i.e. the Act which applies to all South Africans), he cannot be charged with bigamy. Zaid applies to the court to have the state's charge against him nullified. His grounds are:

(a) That he is not a 'Muslim' in the meaning of the Act. He is a Muslim in terms of the Shariah concept to which he adheres.

(b) That he wants his affairs to be governed by the laws as they apply to all South African citizens. Every South African man is permitted by the Constitution to have any number of mistresses and to sow wild oats like pigs and asses without being criminalized. As long as the adulterer has not entered into a legally registered marriage or as long as he does not register his second, third, fourth, fifth *ad infinitum* relationships in terms of the Marriages Act which governs all South African citizens, he does not fall foul of the law. Just as Mr.John who is a non-Muslim is allowed the libertine licence to indulge in multiple extra-marital relationships, so too is it the constitutional right of Zaid to satisfy his carnal lust by his dalliances with a score of females in ways which are not crimes in terms of the constitution. Mr.John with his multiple extra-marital affairs is not criminalized because he does not register any of these affairs in terms of the Marriages Act. This is precisely Zaid's situation. He is just not a 'Muslim' in the meaning of the Act, hence it is unconstitutional to slap on to him the MMB religion. Freedom of religion is a cornerstone of the Bill of Rights.

(c) That he is being discriminated against on the basis of him being a Muslim, and this is unconstitutional.

The following is the ensuing court scenario:

- The judge is a non-Muslim or even a Muslim secularist, a male or a female. The judge may be an atheist, a gay or a lesbian
- The disputants (Zaid and his first wife who objects to the second Nikah) may be of different 'Muslim' religious persuasions.
- The state's expert witnesses may be 'Muslims' whose beliefs are at variance with the beliefs of Zaid or the beliefs of his first wife.

This is the nightmare and the quagmire into which the court is plunged. A totally secular hash has to pronounce on a purely ecclesiastical issue or a doctrine of religion. Then if the court decrees that Zaid is a 'Muslim' in conflict with Zaid's conscience and beliefs, such decree will be in violation of the constitution. Zaid will thus be entitled to appeal to the constitutional court to cancel the unconstitutional decision of the High Court.

In short, it is abundantly clear that the definition of 'Muslim' given by the MMB is severely flawed and ambiguous. It is open to interpretations which will pose a nightmare for secular courts.. Furthermore, no court has the right to impose on any person the belief propounded in the MMB. The court cannot degree that a person is a 'Muslim' in the meaning of the Act, when that person denies being a 'Muslim'.

The MMB definition is weird and the consequences will be bizarre. It creates a nightmare for the courts. In the ultimate analysis, the constitutional will set aside a decree by a lower court that a person is a 'Muslim' even though he contends that he is not one in the meaning of the Act. Any pronouncement by a court to label a person with a religious appellation despite that person contending that he is, for example, a non-Muslim or a 'Muslim' who does not subscribe to the definition stated in the MMB, will be glaringly in conflict with the constitution.

Send your objection to:
The Minister of Justice & 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 objections and comments is 31 May 2011. Send a copy if your objection for our records. Our details: Jamiatul Ulama of S.A., P.O.Box 2282, Port Elizabeth 6056.
e-mail: jamiatusa.1970@gmail.com

JAZAAKALLAAH! May Allah Ta'ala reward you.