

THE KUFR MMB

VOC'S MMB PROPAGANDA AND THE LAWYER'S KUFR CONCEPT OF 'NEGOTIABLE SUBSIDIARY RULES'

The VOC (Voice of the Cape) pamphlet dated 16-02-2011 needs a response. The contentions made by the MJC's Sheikh Gabier and by the Durban attorney, Shuaib Omar are erroneous and misleading. Before we dwell on the errors of these two MMB proponents, it is necessary to comment on the dishonest reporting of VOC. Radio stations are notorious for the propagation of their own bias. While purporting to report fairly and objectively, they are experts in the art of propaganda.

In its propaganda pamphlet under the caption 'Two camps', VOC avers that the NNB Jamiat of Fordsburg (which masquerades as Jamiatul Ulama SA) has just now come out in support of the kufr MMB. Propagating its own pro-MMB bias, VOC thus states:

"The MJC call comes a week after the Jamiatul Ulema SA, the Gauteng-based religious authority, threw its support behind the bill. The Jamiat said it was not in the best interest of SA Muslims to adopt a stance of total rejection of the MMB..."

VOC has cited the NNB Jamiat out of context. The NNB Jamiat did not 'throw' its support for MMB just a week ago. In fact, it did the opposite of what VOC is claiming and propagating. Firstly, the NNB Jamiat has supported and promoted the kufr MPL-MMB to the hilt from its very inception. This is now old hat. A week ago, the NNB Jamiat reviewed its earlier stance and came out with an ambivalent attitude towards MMB. While VOC mentions one part of the NNB's statement, it very conveniently overlooks the other crucial part which announces its stance of ambivalence.

In its recent "Update of Muslim Marriages Bill", the NNB Jamiat stated: "The Bill has been modified by the Department of Justice and Constitutional Development. Some of the changes and provisions of the Bill are in conflict with Islamic Law. The No Name Brand Jamiat, together with members of the legal fraternity is in the process of formulating a detailed submission to the Department of Justice and Constitutional Development with a view to correct provisions of the Bill that are un-Islamic. (emphasis ours).

Thus, a week ago, the NNB Jamiat did not 'throw its support behind the Bill' as VOC falsely and misleadingly alleges. In its statement, the NNB Jamiat unequivocally, albeit very reluctantly and grudgingly, concedes that "some of the provisions of the Bill are in conflict with Islamic Law and are un-Islamic." From its former stance of 100% support for the bill, the NNB Jamiat has climbed down to a stance of ambivalence which advocates 'beneficial engagement

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with the government', and ultimate disapproval if the haraam provisions cannot be remedied, hence it (NNB) states: "However, if we are unsuccessful in our endeavours we will accordingly inform the Muslim public."

VOC has therefore made a dishonest interpretation of the NNB's stance, and this dishonesty is part of VOC's propaganda stunts to support the Kufr Bill. VOC should now explain how it has rationally and honestly concocted its palpably erroneous interpretation when the NNB Jamiat states clearly that "some of the provisions of the Bill are in conflict with Islamic Law and un-Islamic." The logical conclusion of VOC's "throw-support behind the bill" claim is that the NNB Jamiat is currently supporting 100% the Kufr Bill as is, with all its provisions which are in "conflict with Islamic Law and un-Islamic:

Regarding Sheikh Gabier and lawyer M.S.Omar, the following contentions need rebuttal:

(1) Ucsa president, Sheik Abdul Gamied Gabier, reassured Muslims that the majority of the country's ulema would not support a bill if it violated the Shariah in any way."

Sheikh Gabier's naivety, to say the least, is mind boggling. Either he has not bothered to read the Bill, or he has read it without understanding head or tail, and the latter conclusion is more probable in relation to any MJC sheikh. They simply don't understand what they read, whether the matter is a secular or a religious one. Even after its colleague, the NNB Jamiat, has publicly admitted to the presence of haraam provisions in the Bill, Sheikh Gabier either believes or pretends that the Bill is 100% in compliance with the Shariah. Flaunting his colossal ignorance of the contents of the Bill, Sheikh Gabier blandly and non-chalantly sates:

"Ucsa is of the view that the Shariah compliant legislation for Muslim marriages and their consequences is necessary for the preservation....." Here the Sheikh implies that MMB is 'shariah compliant'. How can a man who purports to be a sheikh descend into this dreg of stupidity of having miserably failed to recognize the haraam provisions which are violently in conflict with the Shariah? When even an un-Islamic outfit such as the NNB Jamiat, has conceded the existence of provisions which are un-Islamic and in conflict with Islamic Law, it staggers the imagination to hear that a body which professes to have experts of the Shariah as their members, gorging out the 'shariah compliant' rubbish.

The following are among the un-Islamic and haraam provisions of the so-called 'Muslim' Marriages Bill:

(a) Marrying a second wife is not lawful without the consent of the

non-Muslim secular court and/or the non-Muslim Minister's consent.

(b) Adults under 18 years may not enter into a Nikah as the Qur'aan allows, but with the consent of the non-Muslim secular court. Thus, Nikah allowed by the Qur'aan is severely proscribed and proscribed.

(c) Matters of Talaaq, Faskh, Hadhaanah, etc. will be decreed by the non-Muslim court despite the fact that according to the Shariah the decrees of non-Muslim courts are not valid.

(d) A Muslim who violates any of the haraam MMB provisions can be fined R20,000 or sent to jail.

(e) A man who desires to marry a second wife is required to have a written contract which regulates his property. This proscribes the freedom and right the Qur'aan gives.

(f) An Imaam who registers a valid Islamic Nikah which does not conform to MMB will be fined R20,000.

(g) Parents, Imaams, etc. who advise their subordinates to abstain from MMB, commit a criminal offence and will be fined.

(h) 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.

(i) The husband who does not register his Talaaq will be fined R20,000.

(j) According to MMB, a condition for cancelling a haraam civil marriage contract such as community of property, it is imperative for the husband to issue Talaaq to his wife.

In a separate bulletin we have enumerated 33 haraam provisions of MMB. Anyone interested may write for the article. Despite the existence of such a deluge of un-Islamic provisions which conflict with the Shariah, and despite the MJC's colleague having conceded the existence of haraam provisions, Sheikh Gabier displays stupendous jahaalat by portraying MMB to be 'shariah compliant.'

In fact, VOC says in its propaganda pamphlet: "Ten days ago, Ucsa followed up with a second meeting in Johannesburg to discuss clauses in the bill which it found to be problematic...." This admission also negates Sheikh Gabier's contention of the bill being 'shariah compliant'. While the NNB Jamiat clearly branded the haraam provisions to be "in conflict with Islamic Law and un-Islamic", VOC deemed it appropriate to water down the truth and portray the haraam provisions to be 'problematic'. It conveniently shied away from the 'un-Islamic' and 'in conflict with Islamic Law' descriptions ascribed to the haraam provisions by the NNB Jamiat.

(2) Shuaib Omar who has become notorious for his deliberate misinterpretations and distortion by basing his corrupt conclusions on texts torn from their contexts, is reported by VOC to have said: "Omar said, what Muslim jurists - in their debate on the MMB - should not be doing is to fight about the negotiable subsidiary rules when it

was more important to reach agreement on the inalterable principles in the Shariah.”

This is a typical fork-tongued statement designed to confuse and mislead. He should not express himself with so much ambiguity, talking in circles without clarity of purport. This statement of Mr.Omar is bunkum. He should rather enumerate the ‘negotiable subsidiary rules’ to which he has referred. In relation to MMB he should detail these ‘subsidiary rules’ about which we are fighting so that all and sundry could see and understand whether the fight between the pro and anti-MMB camps pertains to “negotiable subsidiaries” or to absolute Mansoos Ahkaam of the Shariah. Mr.Omar has a flair for bamboozling. But ignoramuses may be hoodwinked with forked tongues, misinterpretation and distortion. People of discernment cannot be fooled by the gibberish Mr.Omar has stated. The heated controversy pertains to non-negotiable absolute laws of the Shariah, not to hallucinated “negotiable subsidiaries”.

Mr. Omar will render himself and others a favour if he would furnish a list of the “negotiable subsidiary rules” around which he contends the fighting revolves.

(3) Another deception perpetrated by Mr.S.Omar in his passionate effort and labour to give birth to the illegitimate MMB, is his averment: “As one great scholar in India – Maulana Tanwi (RA) said: ‘If we don’t show Muslim women the flexibility of the Shariah’ – in terms of the dynamic rules, not the absolutes – ‘if we don’t draw from the different schools and give Muslim women who are oppressed a practical remedy according to Shariah, they will lose confidence in the Shariah. And if that happens they may even move to a level of irtidaad (apostacy).”

Anyone who is dissatisfied with the Shariah and becomes a murtad was destined by Divine Decree for Hell-Fire. That person’s irtidaad was his/her destiny. No one can interfere with Allah’s eternal decree.

A woman who takes to irtidaad on account of her husband’s oppression, never was a Muslim at heart. In eternity, Allah Ta’ala had decreed Jahannum to be her everlasting abode, hence she adopted apostacy before departing from this worldly life.

This was a slight digression from our main topic.

Mr.Omar, by citing this statement of Hadhrat Maulana Ashraf Ali Thanvi (rahmatullah alayh) in the MMB context, not in the context in which Hadhrat Thaavi made the statement, is guilty of deception. Mr.Omar here is attempting to convey to the unwary and ignorant the notion that Hadhrat Thaavi (rahmatullah alayh) made the statement in relation to MMB in India. By this devious ploy, Mr.Omar desires to influence people to support the kufr MMB.

Mr.Omar should spell out clearly what ‘flexibility’ he has in mind in relation to MMB, and in which way is the anti-MMB being inflexible

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so as to open the avenue of irtidaad for oppressed women. He should also discard the ambiguity and explain with clarity in relation to MMB, how did the anti-MMB Ulama fail to draw from the different schools when there was an imperative need. Relative to the MMB's 33 Shar'i violations, what bearing does his statement have? When we say that it is Haraam to impose a R20,000 fine on a man who marries a second wife without kuffaar court consent, does this portray inflexibility relative to a "negotiable subsidiary rule"?

When we say that it is Kufr to proscribe with kuffaar prescription the Qur'aanic permissibility to marry up to four wives, are we portraying inflexibility on a "negotiable subsidiary rule"? Does Mr.Omar accept that it is valid and permissible to fetter the Qur'aanic permission with the consent of the kuffaar court?

It is deceptive and dishonest to make broad statements calculated to gain support abortively for MMB as Mr.Omar does. Hitherto, this man has never been able to cite precise examples of women's oppression which MMB will solve or provide relief for. These miscreant fellows always prey on female weaknesses and on their defective intelligence. They cry, 'oppression' and present MMB as if it is the panacea to solve the oppression which husbands commit on their wives. Then, they descend into worse dishonesty by misleading and hoodwinking women to believe that MMB can offer them such remedies and relief which currently are unavailable to them. When these misguided elements of deception are challenged to prove and to show just how MMB will assist women who are being oppressed, they seek refuge in ambiguities and in talking rubbish of which Mr.Omar is adept.

Let it be known, that Hadhrat Thaanvi (rahmatullah alayh) did not express himself in relation to MMB. He did not imply the provision of relief to women under the aegis of some concoction known as MPL. He urged the establishment of Shar'i Committees (Panchayats) to deal with matrimonial disputes on a non-governmental level. These Shar'i Committees would be empowered by the Shariah, not by the kuffaar government, to resolve matrimonial disputes in terms of the provisions of the Shariah, not the provisions of Kufr MPL or Kufr MMB. The functioning of these Shar'i Committees, whether in India or in South Africa is not reliant on the state. The Shariah gives them sufficient jurisdiction and power to handle issues of Faskh and to set oppressed women free from the nikah bond.

(4) Mr.S.Omar is reported to have said: "Omar believed much of the differences on the bill was due to bad communication between the parties."

This is not so. The differences are the product of the intransigence of the proponents of the kufr MMB. We are saying with emphasis and conviction that the bill is kufr. We spell out what is

kufr in the bill. The opposite camp, without even attempting to negate our arguments and claims, harp on only such rubbish which they perceive to be 'benefits' of the bill. But besides making statements and claims, they miserably fail to substantiate any of their contentions with Shar'i or even mundane facts. For example, when we say that currently recognition for Islamic marriages with Islamic consequences is available without MMB, they don't challenge us to disprove our contention, leave alone presenting argument to negate what we are claiming. Their inability to rationally and logically confront us stems from the realization that their case is baseless, hence they resort to emotionalism and distortion to hoodwink people. This they do because they are dishonest at heart, and lack fear for Allah Ta'ala, hence the perpetration, acceptance and promotion of kufr is meaningless to them. All the kufr of MMB is tolerable to them.

(5) The lawyer's concept of 'negotiable subsidiary rules'

Propounding a new, kufr concept of an evolving shariah open to re-interpretation, mutilation and transmutation, the lawyer, according to VOC, said: " We must bear in mind that there are two aspects from a Shariah perspective. Firstly, there is a small minority of rules and principles in the Holy Qur'an and Sunnah that are absolute. No one can change that. ...we must not fight about the subsidiary rules.They are negotiable where the Shariah has given us flexibility on grounds of genuine need."

Islam is not an institution such as secular law which is open for incremental evolution. While there is nothing constant and absolute in secular law to which Mr.S.Omar's brains are tuned, everything in Islam is constant and absolute. There are no 'negotiable subsidiaries' in Islam. Everything is absolute. This lawyer's concept of negotiable subsidiary rules is kufr, for he exposes the immutable rules of the Deen to the vagaries of man's wildly fluctuating nafs.

In his kufr concept of 'absolutes' and negotiable subsidiaries', part of the Deen is unchangeable, and another part changeable. This vile concept brings the lawyer within the glare of the Qur'aanic stricture: "What! Do you believe in part of the Kitaab and commit kufr with part of it?" With his stupid concept of 'negotiable subsidiary rules', Mr.S.Omar, the secular lawyer with his smattering of Islamic knowledge, is guilty of believing in part of the Kitaab (i.e. his concept of 'absolutes' and committing kufr with a part (i.e. his notion of negotiable subsidiary rules).

In the Deen of Islam which is the product of Wahi there are no negotiable subsidiary rules. Every rule is an immutable absolute, for the Qur'aan, in total rejection of any evolutionary development of law, declares with emphasis and clarity: "This Day have I perfected for you your Deen, completed for you My Favour (Islam), and chosen for you Islam as your Deen."

Let Mr.Lawyer open up his spiritually clogged auditory appendages and listen and understand that it is Satanism to believe that Islam "is a small minority of rules and principles in the Holy Qur'an and Sunnah that are absolute." What is changeable and capable of discarding is not Islam – it is not the Shariah. Every rule of the Shariah, be it of the Istihbaab class, is an unchangeable absolute. Mr.Lawyer must spell out clearly which are the changeable, transmogrifiable and expendable subsidiary rules of the Shariah.

The 'flexibility' permitted by the Shariah is a principled exercise. While there is flexibility in the Shariah, it is subservient to Shar'i principles which in no way whatsoever detract from the absoluteness of the hukm to which the specific principle of flexibility is applied. Even after such application, the Ahkaam remain absolute. Among the variety of such principles, one is the principle of Dhururaat (Imperative/Absolute Need). This principle in fact is directed at what the lawyer terms 'absolutes'. Even an absolute can be changed within the limits of the Shariah on the basis of the principle. Thus, absolutely haraam pork becomes temporarily permissible in terms of the principle of Dhururaat. The absolute prohibition of uttering kufr, etc. become temporarily permissible in the torture facilities of the U.S.A. The absolute act of Wudhu is temporarily relaxed in the absence of water. The absolute of covering the Satr is relaxed for Salaat when garments are unavailable. In short, all those Ahkaam which in the lawyer's mind are 'absolutes' and cannot be changed, are subjects for change within the ambit of the Shariah's limits based on the necessary principles.

Thus, flexibility never means a process of incremental evolution of the Ahkaam regardless of Fiqhi classification. The Ahkaam – all of them of every juridical class, whether Mansoos Alayh or Mujtahad Feeh, will perpetually remain unchangeable absolutes. Concessions permitted, are temporary issues subservient to Shar'i principles which block transmutation of the Deen. The lawyer dwelling in confusion with his conjecture has presented a concept which tolerates hybridization of the Shariah, such as the hybrid MMB in which kufr is 'islamicized' in terms of his kufr concept of 'negotiable subsidiary rules'.

Islamic flexibility does not tolerate displacement and transmogrification of the Ahkaam. Thus, Wilaayat (jurisdiction) may not be conferred to a non-Muslim judge to issue decrees of issues of Faskh, Talaq, etc. To illustrate his silly concept of 'negotiable subsidiary rules', Mr.S.Omar says: "...one such example is that divorce in the Islamic family law context is originally vested in the husband. However, the wife is entitled to a faskh or talaq arrangement where the husband – without losing his right – delegates his right of talaq to the wife under certain terms and conditions. The fact that the right of talaq is vested in the husband originally is absolute."

In this example, according to the lawyer, man's right of Talaq is

an absolute while the wife's entitlement to Faskh is a subsidiary rule. In terms of his concept of 'negotiable subsidiaries', the issues of Faskh and Tafweedh can be manipulated, hammered and changed at whim and fancy. Since it is a 'negotiable subsidiary rule' in his lopsided kufr concept, the imperative requisites for the validity of Faskh, for example, may be set aside and the right to annul marriages be conferred to the kaafir judge.

Just as the husband's right of Talaq is absolute, so too is the mas'alah of Faskh, Tadweedh and all other masaail of the Shariah. The wife has the right to apply for the dissolution of her Nikah on the basis of valid Shar'i grounds. The husband has the absolute right of Tafweedh-e-Talaq. The wife has no such right. Her right to administer Talaq to herself becomes absolute only after the husband, in his own unfettered and unencumbered right has delegated this right to her. Thus, what is absolute to the husband became absolute for the wife after a Shar'i process was initiated.

The incorporation of certain Maaliki masaail into the Hanafi Math-hab is on the basis of absolute Shar'i principles. It is not the consequence of the stupid concept of 'negotiable subsidiary rules'. It operates within the strict confines of the Shariah. It is never random picking and choosing. It is therefore highly erroneous to understand that the Hanafi Ulama have accepted certain Maaliki masaa-il because the position of the situation in the Hanafi Math-hab is one of a 'negotiable subsidiary rule'. No rule of the Shariah is subsidiary. Every rule is absolute. No rule of the Shariah is negotiable. It will remain as it was fourteen centuries ago. The temporary relaxation of a rule and concessions are the effects of absolute principles of flexibility, not the consequences of them being 'negotiable subsidiary rules'.

(6) Reporting the lawyer's statements, VOC, says: "Firstly, there is a small minority of rules and principles in the Holy Qur'an and Sunnah that are absolute."

This understanding is a figment of the lawyer's hallucination. It is another one of his corrupt concepts. The 'absolutes' in Islam, according to Mr.S.Omar, constitute not only a minority, but a 'small minority'. The thousands of masaail and ahkaam of the Shariah are all absolutes derived from the Sunnah which is the Tafseer of the Qur'aan, and from the principles structured on the Qur'aan and Ahaadith. To describe the absolutes as a 'small minority;' is tantamount to the negation of Allah's Shariah.

The motive for the fabrication of the kufr concept of 'negotiable subsidiary rules' and a 'small minority of absolutes' is to mutilate the Shariah and transmute it for gratifying the nafsaani vagaries of the liberals and modernists who have severed their ties with Imaan.

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(7) The opposition of the anti-MMB camp does not pertain to absolutes and subsidiaries. The opposition does not relate to the Shariah's principles of flexibility and latitude. The opposition pertains to haraam provisions which are haraam according to all Math-habs, and for which there are no Shar'i principles of legalization. In other words, the opposition pertains to such issues which are absolutes. The opposition is not in denial of the principled incorporation of masaa-il from the other Math-habs of Haqq subject to valid Dhururah. The simple clamour of the opposition is: Don't make HARAAM what Allah has made HALAAL. Don't attempt to transmogrify the pure Deen of Allah Azza Wa Jal.

The opposition is not arguing against Faskh, Tafweedh, etc. On the contrary, it argues that all these institutions must incumbently operate within the confines of the Shariah. Not an iota more is demanded.

The following episode involving Imaam Ahmad Bin Hambal (rahmatullah alayh) should prove salutary for the misguided lawyer:

A man came to Imaam Ahmad Bin Hambal (rahmatullah alayh) and asked: 'Which acts in Salaat are Waajib and which are Sunnat?' (In the words of the lawyer: Which acts in Salaat are absolute and which are subsidiary rules?). Imaam Hambal (rahmatullah alayh), harshly instructed his Ashaab: "Expel this zindeeq! All acts in Salaat are Waajib. The only difference is that when some Waajib acts are omitted, Sajdah Sahw is necessary, and for some Waajib acts omitted, Sajdah Sahw is not necessary." This is the type of response which the zindeeqs who propound and promote kufr concepts such as 'negotiable subsidiary rules' and MMB rubbish, deserve.

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