

MPL, HADHRAT MAULANA THAANVI AND THE LIARS

Written by Administrator

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Some quacks who masquerade as 'experts' of Islamic Law, are guilty of slandering Hadhrat Maulana Ashraf Ali Thanvi (rahmatullah alayhi) by ascribing blatant falsities to him. They accuse Hadhrat of having being a proponent and supporter of KUFR MPL, Let it be well understood that entertaining in discussion the proponents of MPL is not to be construed as being a supporter of MPL. Just as we today cannot be described as supporters of MPL/MMB should we discuss with the Minister or any MMB committee or any MMB proponent, so too is it HARAAM to make the blatantly false claim that Hadhrat Thaانvi (rahmatullah alayh) was in support of MPL.

Far, very far from this false conclusion, Hadhrat Thaانvi (rahmatullah alayh) was an ardent opponent of any move Such as MPL which seeks to even slightly alter the inviolable Shariah of Allah Ta'ala. One miscreant, deviated secular lawyer went to the extend of peddling the lie that Hadhrat Thaانvi (rahmatullah alayh) advocated and supported the enactment of an MPL measure by the government of India along the lines of the current MPL exercise in South Africa spearheaded by some deviate molvies and sheikhs who have lost the path of the Deen. This allegation made by them is devoid of the slightest substance of truth.

What Hadhrat Thaانvi (rahmatullah alayh) said was that his kitaabs, *Heelatun Naajizah* should be legislated into law and enforced on

all

Muslims. Neither was this acceded to by the British rulers of India, nor is it constitutionally possible in South Africa. Not even the misguided, deviate molvies, sheikhs and the jaahil 'experts' of Islamic Law would dare to even make the suggestion for the legislation of

Heelatun Naajizah

, naming it

The Heelatun Naajizah ACT of 2011.

Constitutionally, that is in terms of the Constitution of the land as it currently stands, two parallel judiciaries are intolerable. In terms of Islam which *Heelatun Naajizah* outlines, the decree of the Qaadhi cannot be made the subject of appeal nor can any court including the Constitutional Court overrule the Qaadhi. In other words, a Shariah Court if accepted by the non-Muslim government will be in the same category as a Shariah court in Daarul Islam (the Land of Islam).

On the issue of the invalidity of the jurisdiction (*wilaayat*) and power of a non-Muslim judge/court,

Hadhrat Maulana Ashraf Ali Thaانvi (rahmatullahi alaih) in Al-Heelatun Naajizah, says:

*"If, anywhere, the presiding judge is a non-muslim, then his verdict will be **absolutely null and void**. Decrees of Faskh, etc. can never be valid by him handing down a verdict, for a non-Muslim is not competent to pass legal judgment over a Muslim. This is clearly stated in all the Kutub of Islamic Jurisprudence.*

Even if a Muslim judge pronounces the verdict prepared by a non-Muslim, or vice versa, then the verdict will likewise not be valid.

Similarly, if a Muslim judge grants extension of time to the husband who is unable to fulfil the conjugal rights of his wife, but prior to the verdict of separation another judge – a non-muslim — was instated and he ruled in the case, or vice versa, the verdict of separation will not be valid. The reason for this is that just as the requirement for passing court verdicts is Shar'i qualification for being a Qaadhi—the verdict of an unqualified person being null—similarly testimony before an un-qualified person is furthermore invalid. It is mandatory for the testimony to be in front of the Qaadhi who is going to hand down the verdict or in front of another Qaadhi who records the testimony in the prescribed manner and dispatches the affidavit in the prescribed manner to the presiding Qaadhi. The Qaadhi does not have the right to issue a ruling in conditions other than these two.

*If the ruling is entrusted to a bench of judges or jury or to a tribunal or committee then the requirement is for **all** members to be Muslim. If any member of this bench or jury or tribunal, etc. is a non-Muslim then in terms of the Shariah the verdict of this group will be absolutely null and void. Tafreeq (legal separation of the husband and wife), etc. will not be valid with such a ruling."*

Question: If a non-Muslim government appoints a Muslim Qaadhi who will have the power to issue decrees on all Muslim personal issues such as marriages, divorces,

maintenance, custody and inheritance, will the decrees of such a Qaadhi be valid in terms of the Shariah?

Answer: Yes. The appointment is valid and so are the decrees of this Qaadhi. However, the conditions for validity are: (1) The Qaadhi will not be fettered to the judiciary of the country. He will function with total independence. (2) The Qaadhis decrees will not be the subject of appeal. Neither the Supreme court nor the Constitutional court will have the power to rescind the Qaadhi's verdicts. Commenting on this aspect, Hadhrat Maulana Ashraf Ali Thaanvi (rahmatullah alayh), states in *Heelatun Naajizah:*

"Those federal states of Hindustan where there is a Shar'i Qaadhi, the matter there is simple. In government administrated territories where there are no Shar'i Qudhaat (pl. Of Qaadhi), if the governors, judges, magistrates, etc. who are appointed by the government to preside over these cases (of Talaq, Faskh, etc.) are Muslim and they pass judgment according to Shariah Law then their verdicts equate to the verdict of a Shar'i Qaadhi. It is stated in *Ad-Durrul Mukhtaar* : 'It is permissible to accept from the Head of State the appointment of being the Qaadhi irrespective of him (the Head of State) being just or unjust, and even if he be a non-Muslim.'

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