

COMMENTS ON THE 'MUSLIM' MARRIAGES BILL BY THE MAJLISUSH SHURA AL ISLAM

Written by Administrator
Monday, 30 May 2011 11:01 -

23 Jamadith Thaani 1432 – 27 May 2011

In its written submission to the Minister of Justice & Constitutional

Development on the MMB, the Majlishush Shura Al Islami of Western Cape,

states:

(1) "We believe that the MMB has certain limitations which could result in

further hardship for Muslims, rather than assistance. The MMB defines a

marriage officer as "any muslim person", which would allow a Muslim female

to do the duties of a marriage officer. In terms of Muslim jurisprudence, a

Muslim female should not be given this responsibility to carry out this duty."

OUR COMMENT:

MMB has excluded the whole of the Shaafi' Muslim community from its

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ambit. A vital condition of imperative importance for the validity of a Nikah

according to the Shaafi' Math-hab, is a male Wali. Without a male Wali the

Nikah is simply not valid in view of the fact that according to the Shariah in

terms of the Shaafi' Math-hab, a female has no contractual capacity in the

matter of marriage irrespective of her being a mature adult of any lofty

status. Her Nikah without a male Wali is BAATIL (NOT valid).

The MJC being a Shaafi' entity is guilty of khiyaanat (abuse and abdication

of Trust) in that it has knowingly and intentionally adopted silence and

accepted the deletion from MMB of this imperative condition for the validity

of Marriage. In condoning the clause pertaining to 'validity of marriages', the

MJC is guilty of kufr, for it has by implication rejected the Shariah's

imperative requisite for the validity of Nikah in terms of the Shaafi' Math-hab

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which it (the MJC) purportedly subscribes to, at least ostensibly.

There is no conundrum in this kufr attitude of the MJC. Since this

imperative requisite of the Shariah strikes at the very roots of the haraam,

kufr 'gender equality' clause in the MMB, the MJC, to appease the gender

equality mob has acquiesced to the cancellation of the Shariah's imperative.

Majlshush Shura has made it quite clear that female marriage officers are

not acceptable to Islam and to the Muslim community. The Minister of

Justice must take note of this non-negotiable requisite. Its incorporation in

any MPL bill presupposes the negation of the 'equality' provision which

Islam rejects.

Another exceptionally important requirement which the Majlshush Shura

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has omitted to include in its submission is the MMB's definition of Iddat.

Again the whole Shaafi' Muslim community is excluded. MMB presents only

the Hanafi version of Iddat. While the Iddat of a divorcee is a period of three

Haidh (menstrual cycles), the Iddat according to the Shaafi' Math-hab is

three Tuhr (which is the period of purity after the ending of haidh).

No one has the right to impose the Hanafi view on the Shaafi' community

and vice versa. But this is precisely what the Kufr MMB has enacted. It has in

entirety ignored the existence of the Shaafi' community, and the miscreant

MJC has condoned this attitude.

(2) In its submission, Majlিশush Shura has made the following proposal:

"Based on our submissions, we believe that the best way forward for the

Minister to implement the recognition of Muslim marriages in South Africa is

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to establish a Shariah Marriage Specialist Court headed by a Quadi (Muslim Chief Justice)."

OUR COMMENT

This proposal while good, will have validity only if changes are effected to the country's Constitution. Without such change, Muslims cannot be compelled to submit to the Shariah Court. It will thus be a costly redundant exercise. The Shariah Court will be a mere shadow without coercive power to impose its decrees on such Muslims who opt for adjudication by the general secular courts. Muslims, primarily females, take the route of the secular court, not for the acquisition of Faskh (Annulment of Nikah), but for haraam monetary and haraam custody considerations. Since the secular law offers women more money and custody rights in conflict with the Shariah, women

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whose ties with the Deen are extremely slack will invariably opt for the

secular law and the general courts. They will not opt for the specialist

Shariah court.

As long as the Constitution is not amended to provide for the mandatory

imposition of the Shariah Court on all Muslims of all persuasions, the

proposal of establishing a Specialist Shariah Court is meaningless. The type

of amendment imperative for making the Shariah Court instrument workable

will be discrimination based on religion. This in turn will be intolerable to the

constitution. Thus, for a viable Shariah Court to find accommodation in the

Constitution, religious discrimination will have to be enshrined as a

principle, and excluded from unlawful discrimination. But this does not

appear feasible and conceivable in the current political ideology of the

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country.

The best solution is to scrap the so-called 'Muslim' Marriages Bill, for this

will satisfy the overwhelming majority of the Muslim community. How is it

possible to enact the stupid, haraam, KUFR MMB as law and to impose it on

an unwilling Muslim community who will most certainly challenge in the

Constitutional Court any such unconstitutional and unlawful imposition?