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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

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Written by Administrator

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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.

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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

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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 inceptual, 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. Objections should be directed to:

Mr.T.N.Matibe, Private Bag X81, Pretoria 0001, or faxed at 086 648 7766, or e-mailed to TMatibe@justice.gov.za not later than 15 March 2011. It is the Waajib obligation of every Muslim to

object and to dissociate from the Muslim Marriages Bill.

Write a letter or fax or an e-mail stating your objection. For our records, forward a copy of your objection

to us:

Mujlisul Ulama of S.A., P.O. Box 3393, Port Elizabeth 6056, or Fax 041 4513566, or e-mail: mujlisul.ulama@gmail.com