THE KUFR SO-CALLED 'MUSLIM' MARRIAGES BILL

REFUTATION OF A BAATIL DEFENCE

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INTRODUCTION

The Durban attorney, Mr. Shoaib Omar, in a recent essay, has attempted to resurrect the kufr “Muslim’ Marriages bill which is currently in the state of hibernation in some government office. He has deceptively endeavoured to peddle the baseless idea that the majority of the Muslim community is in support of the kufr MMB and that the bill is in compliance with the Shariah.

In the attempt to sell his ideas, Mr. Omar has simply regurgitated whatever he had disgorged in essays in the past. He has made no new offering. Every contention which Omar had made in the past in favour of the kufr MMB was refuted and his entire argument was demolished. Thinking that everyone has forgotten his old nonsensical arguments, he has again disgorged the selfsame stupidities hoping that people will swallow his old wine in a new bottle.

In this brief response, we have, Alhamdulillah, refuted every one of the 14 baatil points which he has presented in his plea for the acceptance of the so-called “Muslim” marriages bill.

We have available a number of booklets and pamphlets on the MPL and MMB issues. All of these are available. Write to us for copies.

The Majlis

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MR. OMAR'S BAATIL CONTENTIONS AND OUR RESPONSE

Mr. Omar's first contention

1. "The debate relating to the legal recognition and enforcement of Muslim marriages, and their consequences, in the context of proposed legislation, has understandably been robust and vigorous."

Our Comment

This debate has not been only 'robust and vigorous'. It has been and still is justifiably acrimonious. The acrimony is fuelled by the satanic plot to tamper and dismantle the Shariah. The acrimonious reaction by the opponents of the so-called "Muslim" personal law *nafsaani* device is the effect of *Bugdh lillaah (Acrimony for the Sake of Allah)*. The attempt to transmogrify the Shariah has to be vigorously combated by the Ulama-e-Haqq as well as by all Muslims who are concerned with the purity of the Deen.

The Jihaad to maintain the purity of the Shariah is a unique feature of this Ummah. The Shariats of the previous Ambiya (alayhimus salaam) have all disappeared into the numerous cults of kufr and shirk which exist today in the form of Judaism, Christianity, Hinduism, Buddhism, etc. Since all previous Divine Shariats were subjected to a *nafsaani* process of evolutionary change, mutilation and transmogrification, there remains today no semblance of the original Shariats of Nabi Musa (alayhis salaam) and Nabi Isa (alayhis salaam).

The modernists votaries of "Muslim" personal law, operating as agents of shaitaan, intend to transform and transmogrify the Divine Shariah of Islam in the same way as the followers of the other religions had done to their religions. The kufr exercise of mutilating the Shariah is executed in the very name of Islam. But, since Allah Ta'ala has undertaken in the Qur'aan Hakeem to Himself guard this Final and Perfect Shariah of Islam, the plotters will not succeed in their nefarious endeavours. In this regard the Qur'aans states: *"Verily, We have revealed the Thikr (Islam), and verily We are its Protectors."*

"The context of proposed legislation" mentioned by Mr. Omar is a kufr context, and the proposal is to seek the aid of a kufr institution to enforce this kufr measure and to impose it on Muslims in the name of Islam.

That the "robust and vigorous" nature of the opposition to MPL being understandable relates to only the proponents of the kufr marriages bill. As far as genuine Muslims are concerned, the pro-kufr MPL attitude is not understandable since it is incomprehensible for Muslims of healthy Imaan to passionately labour for a measure which is in total conflict with the Shariah.

Mr. Omar's second contention

2. The fundamental question that arises is : Is there a genuine need for an appropriate statutory framework to regulate Muslim marriages and legally enforce their consequences, including the enforcement of Muslim Family Law principles?

Our Comment

There is absolutely no need in a kuffaar dispensation for a statutory framework to regulate Muslim marriages and to legally enforce their consequences. The institution of Nikah is sacred. It is regulated by a host of Shar'i *ahkaam* (rules and regulations) which may not be submitted to kuffaar brains – such as the secular courts – for interpretation and enforcement

in the light of the kufr constitution which is the great god of the country. The fundamental issue which is of imperative importance is that the kufr constitution which espouses abortion, same sex 'marriages', homosexuality and many other vile acts of immorality, will supersede any law of the Shariah once Muslims render it (the Shariah) subservient to the constitution.

Muslims have lived in this country for centuries without there having been a need for what the votaries of MPL are clamouring and slogging, namely, subjecting the Shariah to the secular courts which have to dispense all affairs within the framework of the kufr constitution. As long as Muslims keep the Shariah free from and unfettered to the laws of the country, there will be no transmogrification of our Deen. It is unintelligent and borders on kufr for Muslims to make the Shariah a handmaid of kufr law – to operate in subservience to the constitution of the country.

There exists adequate Islamic institutions in the country to handle Muslim marriages and their consequences. What Mr. Omar and the clique of MPL votaries are claiming to the contrary is baseless and deception.

Mr. Omar's third contention

3. Take the following example: H and W are married only in terms of Islamic Law. Two minor children are born of their Islamic marriage. The marriage relationship between H and W has broken down. The parties are deadlocked on the following key issues :

3.1 the wife seeks a talaaq. The husband refuses to issue a talaaq. He contends that there are no valid grounds for the termination of the marriage according to Islamic Law, and demands that the wife returns to the matrimonial home.

3.2 The minor children are in the custody of W. H contends for various reasons, that he is entitled to custody, but W disputes this.

3.3 W claims an amount of maintenance from H, including a separate residence, in respect of the minor children, and for their benefit. The latter disputes the quantum of the claim, offers a much lower amount and refuses to provide a separate residence.

3.4 W seeks to recover lump sum compensation from H, representing her direct financial contributions, such as, payments in respect of utilities, bond instalments, and improvements to the matrimonial home. H disputes both liability and the quantum thereof.

3.5 How do we resolve this dispute in a binding and enforceable manner, according to the Shariah? How does a legal practitioner formulate the material elements of a cause of action in order to obtain substantive enforceable relief, consistent with Shariah principles? Even if the parties voluntarily submit to a mediation or other hearing before a Muslim theological body, or scholars, either party is free to ignore the non-binding ruling, and in practice often finds it expedient to do so.

Response to Omar's 3.1

A committee of Ulama *(Panchaayat)* is the appropriate forum for resolving this issue. The Ulama Council has the requisite Shar'i expertise to decide if the husband has valid grounds for refusing to issue Talaaq. It is not for a kuffaar court or a secular court manned by a faasiq Muslim judge to decide on an issue of this nature. The secular court lacks Shar'i competence

and jurisdiction for issuing a decree on this matter. In fact, Ulama Councils are currently engaged in matters of this nature.

Response to Omar's 3.2

Again, the Ulama Council is the only competent authority to decide this issue. Custody of minor children is the subject of Shar'i law. Regardless of MPL, the secular courts will award custody in accordance with the letter and spirit of the constitution. In fact, the MMB has no solution for this type of dispute. The outcome is fundamentally reliant on the interpretation of the secular court which lacks jurisdictiont of preferring any aspect of the Shariah over and above the constitution.

The obligation of the Ulama is only to deliver the Law of the Shariah to the disputants in the same way as the Ambiya were commanded to only deliver the Divine Message to mankind. Thus, the Qur'aan commands the Ambiya to declare to their people: *"On us is only to deliver the Clear Message."* Muslims who refuse to abide by the decrees of the Shariah, do so at the peril of ruining their Imaan. A secular court operating under the duress of a kufr constitution cannot be expected to decide this issue in terms of the Shariah.

Response to Omar's 3.3

Without exception, experience testifies that the ex-wife invariably becomes a *murtadd* when she takes the route to the kuffaar court to sue for maintenance, alimony, etc. In this scenario, the Shariah is gushed down the sewerage drain of kufr. There is not a single case in which an ex-wife has claimed Islamic maintenance for the minor children and for her Iddat expenses. The courts are enlisted to milk and usurp the wealth of the ex-husband. The woman devours haraam and feeds the children on haraam.

On the other hand, an Ulama Council will decree what the Shariah ordains. If then too, the ex-husband refuses to fulfil his obligations, the woman may resort to a court to claim only what the Shariah allows her to claim. There is ample scope within existing secular laws for a woman to claim her rightful due. There is no need for the kufr MMB.

Mr. Omar is either exceptionally naïve, ignorant of the variety of matrimonial laws in existence or perpetrating deception by having produced his 3.3. point in support of MPL. So many non-Muslim ex-husbands circumvent the many laws in place to avoid paying maintenance or adequate maintenance. There are many ways of overcoming the laws in this regard. MPL is no exception.

Furthermore, if a man has to choose between the decree of the Ulama Council and the decree of a secular court, he will readily accept the decree of the former since the ruling of the secular court will most certainly not be in his favour. Maintenance ordered by the Shariah is far less than the amount and the duration which a secular court will decide on. Thus, it will always be the woman who will be favourably disposed to barter away her Imaan. The bait of the huge pile of boodle awarded by the kaafir court induces her to cast the Shariah aside. There is no Islamic merit in Mr. Omar's point.

Response to Omar's 3.4

In all likelihood the lump sum compensation claim lodged by the ex-wife will be *baatil*. Whatever she had contributed voluntarily during the subsistence of the marriage may not be reclaimed from the husband except if it was expressly given as a loan. The issues which Mr. Omar raises in his 3.4 are Islamically baseless. She will be able to claim only a genuine loan

given to her husband, and nothing else. Omar has conjectured the issues in the light of kufr law of which he is a representative.

Even on issues of this nature, the Ulama Council is the proper entity for deciding the matter in accordance with the Shariah. In all probability the Shariah will dismiss the woman's lump sum claim, except in the case of a genuine loan. If the ex-husband refuses to pay to her what is her rightful due, she may then seek relief in the secular court, and for this purpose there is no need for MPL. The existing laws are adequate, and with the existing laws the Shariah is not compromised in any way.

Response to Omar' 3.5

Most of the issues have already been answered above. The "substantive enforceable relief" is possible only in terms of kufr law and in the light and spirit of the kufr constitution to which MPL must necessarily be subservient. The "substantive relief" of which Mr. Omar speaks is not obtainable "consistent with Shariah principles" in a kuffaar law dispensation. It is indeed astonishing that despite being a secular attorney, Mr. Omar fails to understand that any Shar'i principle which is in conflict with either the letter or spirit of the kufr constitution will be struck down.

Is he then so blind or so moronic as to fail to see and understand the outcome of all past cases where women sued their ex-husbands for maintenance, alimony, custody, etc.? The jurisdiction of a secular court cannot be made subservient to the Shariah. The courts are bound by the constitution to override any law whatsoever which is in conflict with its spirit and letter.

The principle of the 'best interests' of the minors is interpreted differently by the Shariah and the kufr constitution of the country. Certain Shar'i aspects of this principle are downright discriminatory and medieval according to the constitution, hence legally untenable. What may be in the best interests of the minors according to secular law, can be haraam and evil according to the Shariah.

In brief, secular courts are never the solution for any of the marital problems which Muslims experience. Muslims who are genuine Muslims will voluntarily submit to the decrees of Allah's Laws. The party which finds it expedient in terms of his/her nafs to renege from Islam by rejecting the Shar'i decree handed down by the Council of Ulama, is not the worry of the Ummah. Those who refuse to submit to the Shariah are not our concern for they are the denizens of Jahannum.

The Shariah may not be tampered with for the sake of supporting a renegade miscreant who spurns the Law of Allah Ta'ala. On assumption that the votaries of kufr MPL are sincere in their desire for their hybrid brand of kufr so-called Muslim personal law to be enforced by a secular court/government, they are merely falling from the frying pan into the fire. For compelling a miscreant by means of secular law to submit to even an assumed Islamic decree, it is unintelligent and haraam to wrought change in the Shariah itself, and that is precisely what the MMB is. It is a kufr measure which is in glaring conflict with the Shariah. But, the intransigent Omar and the small clique of MPL supporters have opted for deliberate blindness and self-imposed jahaalat in this regard. They simply refuse to see the conflict with the Shariah. The fundamental issue here is not that the "party is free to ignore the non-binding ruling" of the Shariah. The core issue is the MPL conflict with the Shariah. The mutilation and reinterpretation of the Shariah are intolerable and unacceptable.

Mr. Omar's No.4

4. The overwhelming majority of stakeholders are agreed that there is a genuine dire need for appropriate Shariah compliant legislation recognising Muslim marriages and enforcing their consequences, in order to address the living realities, solve the substantial problems, and remove serious hardships on the ground. In many cases, Muslim women are unable to enforce their just Shariah rights, are seriously disadvantaged, and often face destitution, with the result that they are compelled to seek an appropriate civil law remedy, which may directly conflict with basic Shariah principles.

Our Comment

The "stakeholders" are those who are pro-MPL. The opponents of MPL are not stakeholders in the kufr MPL measure. So, when Omar says that the "*overwhelming majority of stakeholders are agreed that there is a genuine dire need"* for MPL, he concedes the existence of difference even in the MPL proponent group. The anti-MPL vast majority of the Muslim community should not be confused with the "stakeholders", for they do not agree to what Mr. Omar has cunningly projected here.

Whilst the overwhelming majority of the MPL stakeholders who in reality constitute a small minority of the Muslim community, are agreed on the need for MPL, the vast majority of the Muslim community is implacably opposed to the Muslim Marriages Bill. By his deceptive use of the term "stakeholders", Mr. Omar is desirous of conveying the grossly misleading idea that the overwhelming majority of the Muslim community supports MPL. But this is a blatant falsehood. The vast majority of Muslims are vehemently opposed to MPL.

Should we suppose that the vast majority of the community supports the kufr MMB, then too it makes no difference. The bill is rejected on Shar'i grounds regardless of who and how many are in support of the kufr measure. The Shariah is not subjected to the whims of the majority. The Shariah is the final and perfect Code of Law of Allah Ta'ala for the Ummah. Anyone diverging from its path, joins the ranks of the Mushrikeen. Confirming this fact, the Qur'aan Hakeem states: *"And, if you follow them, then verily you are mushrikoon."*

Mr. Omar presenting a red herring, states the following deception: *"In many cases, Muslim women are unable to enforce their just Shariah rights, are seriously disadvantaged, and often face destitution, with the result they are compelled to seek an appropriate civil law remedy, which may directly conflict with basic Shariah principles."*

This cunning averment is calculated to mislead and to convince by deception. The contention of 'destitution' is palpably baseless since the Shariah permits maintenance for the divorcee for only the Iddat which is the brief period of approximately three or four months, and for the widow there is no maintenance from her husband's estate. Her maintenance is against her share of inheritance, and if the estate is bankrupt, then the resultant 'destitution' will be divinely imposed, which the Believer has to accept.

The secular court operating under the shadow of the constitution is under no obligation to fetter itself to the Shariah's three-month maintenance period. Any such stipulation in the MMB can be successfully challenged in the constitutional court since it is 'discriminatory' in terms of kufr constitutional law and in conflict with the letter and spirit of the constitution. In every case where a woman has resorted to the civil court, her claim was not maintenance for the Iddat period. Her claim was invariably 50% of the husband's entire estate and haraam

alimony. She enlists the aid of the kuffaar courts for only usurping haraam wealth from her ex-husband.

It is the rare exception that refuses to maintain his divorced wife for even the short Iddat period. Since Mr. Omar is a secular attorney, his brains are fitted in a kufr straitjacket which constrains him to think along kuffaar channels. He seeks to interpret the Shariah in the light of the norms of western kufr. It is due to the western intellectual blinkers he has been fitted with that he speaks of 'destitution' as if the ex-husband is responsible for such destitution and as if it is solely his responsibility to ensure that the woman is not left destitute.

Let Mr. Omar open up his kufr-clogged ears and understand that beyond the three-month iddat period, the woman is no longer the responsibility of the ex-husband. She becomes the direct responsibility of her *Asbaat* relatives. Her full support is the Waajib responsibility of her sons (if they are adults), her father, brothers. paternal uncles, paternal nephews, etc. If the *Asbah* closer to her fails to fulfil his Waajib obligation towards her, the duty devolves on the next *Asbah* in the line, and so on. If there are no *Asbaat,* the obligation devolves on the *Zawil Arhaam* (on the mother's side) relatives.

If there are no relatives on both sides or if they all shirk their Waajib responsibility, then the duty of support devolves on her neighbours. If they too fail, the duty shifts to the Muslim community as a whole – as a *Fardh-e-Kifaayah* obligation in the same way as Janaazah Salaat is *Fardh-e-Kifaayah.*

Mr. Omar is silent on this issue either due to ignorance or deception. It is never the duty of a woman to work and support herself. Women working and supporting themselves are a satanic blot on the entire Muslim community. There is a glut of millionaires and wealthy non-millionaires in the Muslim community who go for overseas holiday tours, Nafl Umrahs, who spend on stupendous sums of money of haraam wedding and numerous other unnecessary and even haraam luxuries. It is their duty to set up proper structures in their respective localities to ensure that destitute Muslim women are well-cared for, thus obviating the need for them to wander in the streets seeking jobs in the public domain where they become prostitutes. Mr. Omar should apply his intelligence to these issues instead of acting like a drone and monotonously harping on a measure the objective of which is the transmogrification of the Shariah.

Most divorcees are not interested "to enforce their just Shariah rights" as Omar falsely contends. They are interested to enforce usurpation and to claim what are not their Shar'i rights. They are interested in such gains which are 'rights' in terms of kufr law. A woman who understands her Deen and who has some fear for Allah Ta'ala, is contented with her Shar'i right of Iddat maintenance. To effect change to the Shariah or to subordinate the Shariah to secular court interpretation for the sake of the isolated woman whose recalcitrant ex-husband refuses to maintain her even for the brief Iddat period, is stupid and haraam. Such a woman will not starve nor will she be rendered destitute simply because the man refuses to support her for three months. What will she do after the three months when the man has discharged his obligation? Whatever Omar has tried to argue in his contention is *baatil* and baseless.

Mr. Omar's No.5

5. There is however a difference of approach on the nature and form of legal recognition. Whilst the overwhelming majority support a viable, practical and

comprehensive statutory framework, incorporating an appropriate dispute resolution procedure, including adjudication by way of court and arbitration , a minority believe that legislative regulation should be limited to only the formal legal recognition of Muslim marriages per se, and not their resulting Consequences. The latter approach however does not solve the serious problems on the ground. In addition, the regulation and legal enforcement of the detailed personal and property consequences of an Islamic marriage in terms of the ordinary applicable civil matrimonial law is clearly not permissible, and is contrary to the overarching objectives of the Shariah. (Hifz al Din : that is the protection of the distinct Muslim personality and character).
On the contrary, the legal recognition of the Islamic marriage only, may constitute a tacit impermissible endorsement to use and apply the civil law to regulate the consequences, such as custody, access, maintenance and guardianship.

Our Comment

While Mr. Omar is correct in claiming that the overwhelming majority of the kufr MPL "stakeholders" supports the MPL procedure, it is a blatant LIE to claim that *"the overwhelming majority supports"* the kufr bill. By not qualifying the term *"overwhelming majority"*, Omar intends to mislead and deceive with the idea that the overwhelming majority of the Muslim community supports the kufr device. Omar has no evidence for his false contention. On the other hand, the opponents of the Kufr MMB have documentary proof to testify that the overwhelming majority of the Muslim community is in opposition to MPL and its MMB.

In fact, there is even no need for the 'minority' view of only recognition minus consequences. This is a superfluous equation. Muslims should be satisfied with only Shar'i recognition. If there is a specific case for which legal recognition is a dire need, the secular laws make ample provision for accommodation in a way which does not conflict with the Shariah, e.g. *antenuptial contract without the accrual clause.* There are also ways to circumvent Shar'i violations in the current dispensation. The resort to such strategies does not interfere with the Shariah while the recipe disgorged by the votaries of MPL seeks to disfigure the Shariah. The "serious problems on the ground" can be solved in some way or the other without tampering with the Shariah. MPL will not be resolving the "problems on the ground" in accordance with the Shariah. Its resolution will be subservient to the constitution which is in conflict with the Shariah.

Omar's contention: *"In addition, the regulation and legal enforcement of the detailed personal and property consequences of an Islamic marriage in terms of the ordinary applicable civil matrimonial law is clearly not permissible…."*

In fact, the whole of the MMB is not permissible according to the Shariah. Mr. Omar has here presented another red herring and deception. He seeks to deviously create the impression that he and his kufr MPL are concerned with the "personal and property consequences of an Islamic marriage". Inheritance is also a consequence of an Islamic marriage. But, the kufr MMB is deafeningly silent on this issue. It is indeed ironical whilst the MMB is being hailed as an 'Islamic' bill, it makes no provision for Islamic inheritance, but on the contrary, the secular antenuptial contract law permits Islamic inheritance. It allows for the distribution of the deceased's estate in accordance with the Shariah's Law of inheritance if a Muslim leaves an Islamic Will.

Just as "the ordinary applicable civil matrimonial law" does not cater for Shar'i requirements, so too does MMB not cater. Regardless of the Islamic nomenclature MMB employs, it is just as kufr as the secular laws.

Muslims who are Muslim at heart will secure the Islamic consequences of an Islamic marriage without the need for any secular coercive law. Those Muslims who reject the Shariah and refuse to submit to its decrees, are to be written off. They should not be our worry. They shall answer to Allah Ta'ala for their misdeeds and kufr.

"Hifz al Din" in a non-Muslim state or in a Muslim country governed by kufr secular law is possible only by the will of the individual Muslim who understands his Deen. It is not possible by the imposition of a secular court which does not understand either head or tail of the Shariah, and which is governed by a constitution of kufr.

Omar's contention regarding the supposed *"tacit impermissible endorsement to use and apply civil law"*, is palpably baseless. Firstly, legal recognition is a non-issue to the overwhelming majority of Muslims. They are just not interested in such kufr recognition. They believe that Allah's recognition is more than adequate.

Secondly, MMB does not offer Islamic consequences in the strict meaning of the Shariah. Thirdly, the adoption of a suitable civil matrimonial regime by a genuine Muslim is merely for the purposes of circumvention or for surmounting some secular obstacle, e.g. to ensure distribution of the estate in accordance with Allah's Law of inheritance. But, MMB makes no provision for this dire need. Fourthly, those who seek consequences in terms of kufr law, are not our concern. They are the camp followers of Iblees. Mr. Omar's contention is devoid of Islamic merit.

Mr. Omar's No.6

6. The current legal position is that matrimonial disputes and matters relating to status are not arbitrable in terms of South African Law. It follows that the incorporation of arbitration, within the scope of a viable statutory framework, will be a useful mode to settle family disputes privately, consistent with the norms and requirements of the Shariah, provided that the process is competently and efficiently managed, with proper independent oversight.

Our Comment

Regardless of the current legal position pertaining to arbitration, Shar'i arbitration is always available to genuine Muslims. We have repeatedly mentioned that those who are uninterested in Shar'i structures and the *Ahkaam* of the Shariah, are renegades (murtadds) who are not the liability of Muslims. A Shar'i process of *Tahkeem* (Arbitration) is restricted to Muslims.

The Shariah in a non-Muslim country or in an un-Islamic Muslim country governed by kuffaar masquerading as Muslims, is a voluntary Code of Life. It cannot be applied by coercion and force. Any Muslim who refuses to submit to the Shariah, simply chalks his path to Hell-Fire. The fabrication of a hybrid MMB which anyhow is *baatil*, does not solve the problem in any way whatsoever.

The term, *"competently and efficiently managed, with proper independent oversight"*, is both ambiguous and wishful thinking. This objective cannot be achieved by a secular institution operating under the umbrella of the kufr constitution which does not recognize the Shar'i process of *Tahkeem.* The clauses of the proposed arbitration incorporated in the MMB are un-Islamic. Thus, the conflict with the Shariah is the very bottom line from which MMB begins.

Mr. Omar's No.7

7. "The Holy Quran expressly recognises arbitration as a mechanism for resolving matrimonial disputes. (Surah Nisa : Verse 35) According to a substantial body of jurists, including the Maliki school, arbitrators, who are appointed by the state, or its judicial system, perform a judicial function, in the sense that they have the original power, in their discretion, to reconcile the spouses or terminate the marriage, without the prior mandate or consent of the spouses. On the other hand, another body of juridical authority, including the Hanafi school, are of the opinion that the appointed arbitrators are the agents of the spouses, and do not have the power, on their own, to dissolve the marriage, except with the prior mandate or consent of the spouses.

These juristic differences of interpretation should be viewed in the context matrimonial discord. (Shiqaq) On either view, the award is binding and enforceable."

Our Comment

What Omar tries to explain here has no relationship with MMB. His explanation in the context of the MMB discussion is superfluous. The specific items and differences pertaining to *Tahkeem* in terms of the Maaliki Math-hab, are unrelated to MMB. Furthermore, should arbitration be imposed by civil law, its terms will not be in compliance with the Shariah. According to the Shariah, the parties who have agreed to arbitration have the right to renege prior to the award/decree of the *hakam* (arbitrator). So whilst, the false flag of 'arbitration' is dangled, the entire body of the process is Islamically corrupt. The award will be binding only if the process is 100% in compliance with the Shariah, and if the parties agree to sit through the entire process until termination and award.

Mr. Omar's No.8

8. The substantive proposals of the United Ulama Council of South Africa include alternative dispute resolution, as part of an overall viable Shariah compliant statutory framework, in the form of compulsory mediation and private voluntary consensual arbitration, based on a final enforceable award conforming with Shariah law. Arbitration would give the parties an opportunity to choose their own wise specialist, impartial, just Muslim arbitrator/s, with appropriate technical experience. In this way, the arbitral process may help to avoid any potential fear of judicial misinterpretation of basic principles of Muslim Family Law. The Court will normally endorse the final binding award of the arbitrator/s, by incorporating it in a Court Order, with the result that it is enforceable. An arbitrator's award can generally only be set aside on defined review grounds, because consensual arbitration is designed to achieve finality, and to give effect to the decision of the parties' chosen adjudicator. However, if one or both parties refuse to accept the award, it may become a recipe for litigation. It is imperative, if private family arbitration is to succeed, that the arbitrators be properly trained in the delicate field of adjudication (qada), and that flexible framework rules be developed, including the design of a model family arbitration agreement, to enhance its efficacy and effectiveness, and to create public confidence that justice would be done at all stages of the arbitral process.

Our Comment

The claim made by Omar regarding the imagined proposals of the United Ulama Council of South Africa, is false. This is a baseless attribution to UUCSA who has not made any such proposals as averred by Mr. Omar. UUCSA has unequivocally rejected MPL. Hopefully, the United Ulama Council of South Africa will issue a statement to exonerate itself from the falsehood which Omar has attributed to UUCSA.

As far as Omar's proposal of "compulsory mediation" is concerned, it should firstly be examined with the whole MMB in the background. Even if 'compulsory mediation' is found to be Islamic, it does not justify a bill cluttered with un-Islamic clauses and kufr. In addition, the parties cannot be Islamically subjected to a mediation imposed by a secular kufr authority.

Should mediation be imposed as a compulsory requisite prior to divorce, it will take no cognizance of a Talaaq issued by the husband whereas such Talaaq, if it is Baa-in or Mughallazah, will finally terminate the marriage rendering mediation redundant. Whilst the term 'mediation' has bait value, the body of which it consists in a secular dispensation militates against the Shariah.

The issue of arbitration has already been dismissed above, in brief, and in some of our earlier publications, in detail.

The rest of Omar's No.8 is nothing but hot and stale air which has been refuted in detail in our early refutations. It is indeed stupidly naïve or deceptive to peddle the idea that *"any potential fear of judicial misinterpretation"* of the Shariah could be precluded by what Omar terms, *"technical experience"*. Judicial misinterpretation is a forgone conclusion in view of the fact that the Constitution declares:

"SUPREMACY OF THE CONSTITUTION

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

The "technical experience" referred to by Mr. Omar portrays his naivety and wishful thinking. No amount of such hallucinated "technical experience" will be allowed to supersede the great idol-god of the constitution. The constitutional court judge, Justice Moseneke, explaining the supremacy of the constitution, stated:

"*Courts are required not only to apply customary law but also to develop it. Section 39 (2) of the Constitution makes plain that when a court embarks on the adaptation of customary law,, it must promote the spirit, purport and objects of the Bill of Rights.*

The adaptation of customary law serves a number of important constitutional purposes. Firstly, this process would ensure that customary law, like statutory law or the common law, is brought into harmony with our supreme law and its values, and brought in line with international human rights standards. Secondly, the adaptation would salvage and free customary law from its stunted and deprived past. And lastly, it would fulfil and reaffirm the historically plural character of our legal system, which now sits under the umbrella of one controlling law – the Constitution."

Should the MMB ever be promulgated as law, subservience of the Shariah to the secular courts will be axiomatic. The courts are constrained to interpret any law in the light and ethos of the Constitution of the country. It is the ethos of the Constitution which will resolve any conflict – and there will be many – between the Shariah and the laws of the land. In this regard Maulana Moosagie says:

"*In deciding any matter placed before the Supreme Court of Appeal or the Constitutional Court, judges are obliged to take into account those secular legal principles and values which transcend religion, race and gender. To expect these courts to jettison any of those fundamental principles in favour of any religious practice is naivety at its highest."*

Once the MMB is adopted as law, the interpretation of any Shariah substance contained in such an Act will not be within the control of Muslims. It will be tantamount to handing over

the Shariah to the secular courts for interpretation and decision. In this regard, Maulana Moosagie says:

"Muslims will lose control over how it will be interpreted by the Supreme Court of Appeal or the Constitutional Court. Moreover, whatever ruling is handed down by the High Court's becomes instantly applicable and binding upon all those who have opted for it. This is indeed a scary scenario."

It behoves the Ulama who are campaigning for the MMB to reflect and try to understand the disastrous consequences of the danger inherent in assigning the Shariah to secular court interpretation. Regarding the Ulama advocates of the bill, Maulana Moosagie says:

"The ulama who actively campaign for the adoption of the Bill can in no way guarantee that the Bill they now support in its current form will remain true to the values they infused into it."

Here it will be prudent to say that the Bill in its current form is already in glaring conflict with the Shariah. This conflict is even before it has been submitted to the secular courts for interpretation. The ultimate outcome is a truly 'scaring scenario'.

Mr. Omar has put together a lot of words devoid of real meaning.

Mr. Omar's No.9

9. The written submission or arbitration agreement, sourced in, and based upon the dispute resolution machinery of the Bill, may however validly refer all disputes arising from the marriage, and its consequences, to be determined by arbitration, as freely agreed by the parties.

Our Comment

What is this "dispute resolution machinery"? Ambiguity and stupidity lacking in Shar'i substance. There is nothing Islamic in this bogus machinery proposed by the votaries of MMB. The whole kufr MMB is a bogus forgery marketed under an Islamic caption. The very method of arbitration portrayed as *"Tahkeem"* in the MMB is invalid in terms of the Shariah.

We do not know what Omar means by 'validly refer". It may be valid in terms of kufr law, but not according to the Shariah. A hybrid system of arbitration will not be valid in the Shariah.

"Freely agreed by the parties"? The parties are free to agree to anything in terms of the Shariah without the haraam encumbrance of the kufr MMB

Mr. Omar's No.10

10. Furthermore, in the context and within the framework of a viable, sustainable, practical, statutory framework :

10.1 the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

10.2 the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute, in this case, the Shariah, as is contemplated by and entrenched in the Bill.

Our Comment

Mr. Omar has degenerated into a lot of nonsense in No.10 of his MPL potion. He speaks of a "viable framework…." What is this viable framework? What is the meaning of sustainable and practical in the MMB context? For a surety the framework is neither practical nor sustainable in terms of the Shariah? Mr. Omar should dilate on these devious ambiguities, and we, shall, Insha-Allah, issue the correct and an adequate rebuttal of the flotsam he may disgorge to in the attempt to bolster his kufr MMB project.

The freedom of the parties to adopt the "procedure of the arbitral tribunal" is irrelevant. It has to be seen whether the procedure is sustainable in terms of the Shariah. And, assuming that it is sustainable, then too, it has to be evaluated in the light of the gamut of kufr clauses and stipulations of the whole kufr bill. On the assumption that the procedure is sustainable according to the Shariah, it does not bring the kufr bill into the confines of acceptability.

Partial compliance with the Shariah is in fact no compliance, and comes within the purview of the Qur'aanic stricture: *"What! Do you believe in part of the Kitaab and reject part (of it) The punishment of those among you who do so is nothing but disgrace in this worldly life, and on the Day of Qiyaamah they will be made over to the severest punishment."* The Qur'aan further commands: *"O People of Imaan! Enter into Islam fully.."* Partial adoption of the Shariah is kufr.

In his 10.2 ambiguity, Omar states: *"…as applicable to the substance of the dispute, in this case, the Shariah, as is contemplated by and entrenched in the Bill."*

The contemplation of the Shariah by the Bill lets the cat out of the bag. In this contemplation, judicial interpretation will play a vital role. The "shariah" is here fettered and subjugated to the Kufr Bill which will incumbently operate under the *"umbrella of one supreme law, which lays down a common normative platform" (Justice Moseneke of the Constitutional Court).* If Omar is too dim in the skull to understand this fact, others are not.

Mr. Omar's No.11

11. In these circumstances, all relevant stakeholders, more particularly Muslim lawyers, who play a vital role, would appreciate the need to work jointly with the United Ulama Council of South Africa in supporting its proposals for the inclusion of an appropriate alternative dispute resolution procedure withi n the framework of appropriate Shariah Compliant legislation.

Our Comment

All Muslim lawyers are not stakeholders in the MPL kufr. The Muslim Lawyers Association of Transvaal had sent a detailed memorandum to the authorities objecting to MMB. They are not in support of the kufr bill. They have voiced genuine fears of the Shariah being compromised by MMB.

The United Ulama Council of South Africa is also in opposition to MMB. There is no acceptable "alternative dispute resolution procedure". The only alternative is the Shariah minus the enchainment of secular legislation.

Omar cunningly attempts to mislead the unwary and ignorant by mentioning the 'shariah'. But the 'shariah' is qualified here with "the framework of appropriate Shariah Compliant legislation". There is no such legislation. The 'shariah compliant legislation' is a bogey – a

deception. The legislation proposed by MMB is in conflict with the Shariah. The compliance is thus Mr. Omar's hallucination or his plot.

Mr. Omar's No.12

12. There would understandably be differences of opinion and approach, in such sensitive matters. These differences should however not lead to divisions, acrimony and resulting decline, but should be positively managed and harnessed for collective betterment, development, and beneficial empowerment of the community.

Our Comment

Division and acrimony in the stance against the kufr MMB are requisites of the Shariah. The opponents of the kufr bill are up against men for whom kufr is acceptable as long as the kufr is presented with a deceptive Islamic façade. The MMB proponents are engaging in the destruction of the Shariah. Division and acrimony are the logical consequence of the attempt to mutilate and transform the Shariah. Kufr cannot be "positively managed and harnessed for collective betterment, development and beneficial empowerment of the community". This is another hallucination of Omar.

Kufr in the garb of the deen has to be fought tooth and nail. It is the Waajib obligation of the Muslim community to oppose the kufr MMB plot. MMB in different forms is a western plot. The west has succeeded to impose MMB under a variety of names in different Muslim countries. Since the surrogates of the western kuffaar are at the helm of affairs in Muslim countries, the plotters have succeeded to have MMB legislated into law. Hitherto there has been vigorous opposition to MMB by the Muslim community of South Africa. It is vital that Muslims maintain their current stance of vehement opposition to this kufr bill.

Mr. Omar's No.13

13. May Allah grant all relevant stakeholders the Tawfiq to arrive at an appropriate consensus, or, failing that, the interested parties agree to differ on the basis of mutual respect, consistent with Islamic principles of tolerance and ethics, described as Adab Al Ikhtilaf. The established four schools of law, represent, in substance, four schools of interpretation, derived from the primary sources, reflecting a dynamic and purposive interpretation of the majority of the texts, but off course, excluding those primary texts, (minority in number) which are plainly both clear, unambiguous and absolute. (Nass Qati)

Our Comment

May Allah Ta'ala grant the Muslim community the taufeeq to continue opposing and fighting the evil kufr of the bill. May Allah Ta'ala never permit a consensus on this evil issue. Rasulullah (sallallahu alayhi wasallam) said: *"My Ummah will never unite on deviation."*

The division which has stemmed in the wake of the kufr plot is the *Ni'mat (Bounty)* of Allah Ta'ala. A unity which interferes with Allah's Laws is a shaitaani and an accursed unity. There can be no respect for kufr and its proponents. If the density of their brains precludes them from seeing and understanding the kufr of MMB, it is indicative of them being beyond redemption. There can be no respect for the enemies of the Deen. The Hadith dictum of *Bughdh lillaah* is applicable in this scenario. There is no tolerance in Islamic principles of tolerance and ethics for kufr. The father of kufr, Shaitaan, was expelled from the heavens. His kufr was not tolerated.

The kufr MMB is beyond the confines of valid interpretation of the Four Math-habs. There is no accommodation for the kufr MMB in the Four Math-habs. The interpretation of the deviant modernists such as Omar, is *baatil*. There is no room in Islam for his kind of interpretation – an interpretation which prepares the ground for mangling and mutilating the Shariah.

The kufr MMB is in fact in conflict with *Nass-e-Qat'i (Absolute Proof of the Shariah).* It is in violation of the Shariah on a range of issues. These have been explained in detail in many of our earlier publications which are available to anyone who wishes to know more about this kufr plot.

Mr. Omar's No.14

14. A right without a remedy of enforcement is ineffectual. As the great second just Caliph Umar (RA) stated: "It is not beneficial to speak of rights, which have no legal enforceability".

Our Comment

The enforcement by a kufr entity of a hybrid measure presented with an Islamic hue was never contemplated by Ameerul Mu'mineen, Hadhrat Umar Ibn Khattaab (radhiyallahu anhu). Enforcement of *baatil* by even a Muslim authority is not the enforcement of a Shar'i right. The "legal enforceability" stated by Hadhrat Umar (radhiyallahu anhu) is enforceability by the Khalifah or the Islamic State. It is not what Omar conjectures. It is not enforcement of kufr on Muslims by a kuffaar authority.

The Shar'i response for Mr. Omar's kufr MMB is Hadhrat Umar's *Durrah. And, peace on those who follow the hidaayat of Islam.*