

Proposed Muslim Marriages Bill

The Department of Justice and Constitutional Development has just released a revised copy of the Muslim Marriages Bill. The Bill comprises a set of legislative proposals concerning Muslims marriages, divorces, and related consequences. Several years ago the South African Law Commission led an investigation into Muslims marriages and their consequences. The Commission's findings were published in the form of a Draft Muslim Marriages Bill. A booklet with details of the History of MPL will soon be published, Insha Allah.

The ultimate aim of this Bill is to give legal recognition to Muslim marriages. It is then hoped that such recognition of Muslim marriages will serve to alleviate the difficulties women experience in matters of divorce, maintenance, custody, etc.

THE FEAR

While such aims are laudable and commendable, the big fear that overrides all these noble aims of the Bill is the resultant assimilation of Shar's laws into a non-Muslim Constitution that threatens to distort or even replace the Divine Law of Islam. When studying the Bill, it is imperative that we carefully consider the extent the Bill goes in accommodating Shariah. It is a violation of Quran and Sunnah to dispense with Shar's fundamentals in an effort to achieve a few worldly rights or alleviate perceived hardships that are attainable through other means. This, in our humble view, is the fulcrum of the whole debate over whether the Bill should be adopted for Muslims or not.

It is understandable that there is support for the Bill from groups who believe such legislation will enshrine the rights of women and create a forum of redress for inequities that they have been suffering in the past as a direct result of injustice by husbands. But what we must not fail to consider is that a structure of this nature must remain within the framework of Shariah. It is contradictory and erroneous to fight for restoration of our Islamic rights while at the same time we trample over other Islamic rules and principles. In the case of the Marriages Bill, it must be remembered, the State is directly involved in assimilating Shariah into its constitution.

It is a forgone conclusion that the State Constitution will override any law or regulation that is no consistent with it. We, therefore, have to contend with State interference in matters of Shariah. Should such interference not alter or convolute the Divine Shariah, we will support it to the fullest. But anything to the contrary will be opposed with equal vehemence. In the fight for a limited number of rights, it is haraam, not to mention foolish, to jettison a whole array of Shar's injunctions and run the risk of transmutation of Allah's Deen. It is therefore necessary to weigh the pros and cons of this Bill.

The Quranic principle in gauging the extent of Shar's compliance of any practice or institution is to counterbalance its benefits against its harms or disadvantages. We need to apply this Quranic principle to the contents of the Muslim Marriages Bill.

SHAR'S DISCREPANCIES

A study of the Muslim Marriages Bill will reveal a number of serious Shar's violations which had to be incorporated into the Bill to make it compliant with certain Constitutional requirements. As alluded to earlier, we intend publishing a booklet highlighting these discrepancies and at the same time suggesting alternate proposals to achieve the same aims as the Bill set out to achieve. The Muslim Marriages Bill is a document that seemingly safeguards the rights of Muslims related to Nikah and similar matters. It is, therefore, only reasonable that a Bill of this nature should never deviate from the very Shariah it claims to protect. How can a set of rules be deemed feasible to protect Islamic rights when the bulk of it actually contradicts Shariah?

This Bill, should it become part of government legislation, will affect the lives of every Muslim in this country; hence it is of paramount importance that Muslims acquaint themselves with the facts related to the Muslim Marriages Bill.

The Muslim Marriages Bill has been under debate since 2003, when the first Draft was submitted to the Minister of Justice for approval. In the interim, there has emerged a steady groundswell of dissent to the Bill, in consequence of which the draft Bill itself had undergone a number of changes and omissions. The implementation of a Bill of this nature is obviously a totally new concept and an absolutely untried and untested exercise. It is precisely for this reason that we find such a broad spectrum of diverse opinion and prolific academic debate.

Like any other piece of legislation, the Bill contains a number of legal and administrative requirements, which we understand have to be made mandatory, such as producing identity documents, proof of addresses, proof of age, written consent from a Guardian and so forth. We have no qualms with these requirements. Our fight is against those clauses that clearly interfere with Shariah Law, or that circumscribe to Muslims which Shar's laws they may practice and which they may not practice, or that impose legislation that clashes with Shariah or is tantamount to sheer injustice and zhulm in terms of Quran and Sunnah.

CONSTITUTION

It is from certain clauses in the Bill that the Constitution reigns supreme, and the Divine Law of Shariah will always operate under the aegis and supremacy of the country's constitution. As long as this status remains, there are no

guarantees that Shariah will be protected and ring-fenced from interpolation and tampering. This is not guaranteed by the Bill, and is therefore, not acceptable.

The above fear is further underscored when a matter is taken on appeal to the Supreme Court of Appeal, or is challenged by affected people in the Constitutional Court. How the Supreme Court of Appeal or the Constitutional Court will handle the appeal or interpret the provisions of the Bill in the light of South African Constitution is totally unpredictable. The risks are too high for Muslims to underestimate the powers of these two highest judicial bodies of the country. Judicial machinations are not governed or directed by religion, instead they function strictly according to the Constitution.